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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 65

VETERANS OF THE ABRAHAM LINCOLN BRIGADE,
PETITIONER

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the court of appeals (R. 215–232) is reported at 331 F. 2d 64.

JURISDICTION

The judgment of the court of appeals was entered on March 2, 1964 (R. 234), and the petition for a writ of certiorari was filed on May 5, 1964. The petition was granted on June 22, 1964 (377 U.S. 989; R. 235). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1) and Section 14(a) of the Subversive Activities Control Act of 1950, 50 U.S.C. 793.

QUESTIONS PRESENTED

The Subversive Activities Control Act of 1950 provides for the registration of any "Communist-front organization," which is defined (Section 3(4)) as an organization "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization * * *." Petitioner was found by the Subversive Activities Control Board to be controlled by, and to be operated primarily to give aid and support to, the Communist Party, which the Board had previously found to be a Communist-action organization. The questions presented are:

1. Whether the Board or the court below erred in applying either the control or aid components of Section 3(4) or the evidentiary factors in Section 13(f) to the facts before them.

2. Whether the provisions of the Subversive Activities Control Act of 1950 providing for the registration of "Communist-front" organizations violate the First Amendment.

3. Whether the Act, as construed by the Board, is unconstitutionally vague under the First Amendment or the due process clause of the Fifth Amendment.

4. Whether the Act violates the due process clause of the Fifth Amendment by not allowing petitioner to relitigate whether the Communist Party was a Communist-action organization.

5. Whether the Board's reliance on evidence predating the passage of the Act violates the due process clause of the Fifth Amendment or the *ex post facto* clause.

6. Whether the registration provisions violate the self-incrimination clause of the Fifth Amendment.

7. Whether the disabilities imposed by the Act on Communist-front organizations and their members are constitutional.

STATUTE INVOLVED

The pertinent provisions of the Subversive Activities Control Act, 50 U.S.C. 781, *et seq.*, are set forth in the Appendix to petitioner's brief, pp. 1a–15a.

STATEMENT

The Attorney General began this proceeding on April 22, 1953, by filing with the Subversive Activities Control Board a petition for an order requiring petitioner to register as a Communist-front organization under the Subversive Activities Control Act (R. 74). Hearings were held, and on May 18, 1955, the hearing member of the Board issued a decision recommending that petitioner be ordered to register (R. 76). On December 21, 1955, the Board issued a Report and Order determining petitioner to be a Communist-front organization and ordering it to register (R. 74–214).

On December 17, 1963, the court of appeals, one judge dissenting, affirmed the Board's order (R. 215–232). Because of "the tremendous volume of the record of this evidence" and "the almost numberless

facets of fact involved," the court invited petitions for reconsideration, to give the parties an opportunity to refer specifically to any evidence which might have been overlooked (R. 229). Petitioner filed such a petition, which the court denied on February 17, 1963 (R. 233).

The evidence and findings of the Board are as follows:[1]

1. *Background.—a. The World Communist Movement.* The Board heard extensive evidence and discussed at length the world Communist movement and its connection with the American Communist Party (R. 78–87). Of particular importance is the evidence concerning the use of the United Front[2] by the Communist movement and the various Communist parties. This tactic involves working with and through non-Communist organizations, and has several different

[1] In supporting the statements made, we refer first to the evidence—the transcript of the proceedings before the Board ("Tr.") or exhibits introduced either by the Attorney General ("A.G. Ex.") or by petitioner ("P. Ex.")—then to the Board's reference, if any, to this evidence in its Report ("R."). Some of the Board's findings are contained in the portion of the hearing member's recommended decision (R. 1–74) which was adopted by the Board as its own findings (R. 89).

Much of the evidence supports both petitioner's control by, and support of, the Communist Party. As to such evidence, we have placed it within the portion of the Statement to which it seems most relevant.

[2] The United Front is also discussed in Appendix B to the government's brief in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board*, No. 44 this Term.

forms. Communist organizations may participate openly with other organizations in a certain movement, or Communist members may attempt secretly to infiltrate and control existing organizations (Tr. 2295, 2425, 2615–2616; R. 85). One of the principal methods followed in the United Front strategy is to label Communism's principal enemies as fascist in order to attract as many non-Communist allies as possible (Tr. 131–139, 2674–2679; R. 85). As the Board summarized the evidence (R. 85–86):

> It is also established that in connection with world communism's united front movement, the term "fascist" or "fascism" is carefully and designedly used to label the chief enemies of Soviet Russia (fascist or otherwise), and to serve Communist interests, in an endeavor to win them as many allies as possible through its application at any given time. This technique is the center of Communist strategy and is grounded on Stalin's *Foundations of Leninism* which teaches that with the vanguard alone victory is impossible, and hence it is necessary for Communists to mobilize the support of many who are not Communists. In order to do so, it is necessary to raise issues which do not involve pitting communism against something else and attempting to rally masses in support of communism, but, rather, involves rallying them against or around another ostensible objective.
>
> The real objective is always to get the maximum number of supporters that can be moved along the path of the Communist line for any particular period. "Anti-fascism" and "Span-

ish fascism" were used pursuant to this strategy and tactic as a means of including hundreds of thousands of supporters to follow the Communist line for Communist purposes, leading ultimately to Communist domination.

b. The International Brigades. The International Brigades were set up in Spain beginning in the fall of 1936 and first participated in the Spanish Civil War in November of that year (Tr. 2976; R. 87). There were five International Brigades. The Fifteenth, consisting chiefly of Americans, Englishmen, and Canadians, is of principal interest here (Tr. 1074; A.G. Ex. 25 (p. 5) R. 87). Andre Marty, who was a member of the Executive Committee of the Communist International (the Commintern) and a leading French Communist, was the chief political commissar of the International Brigades and was considered by the members of the Fifteenth Brigade as their supreme head; Luigi Gallo (also known as Luigi Longo), who was then a high official of the Italian Communist Party, was commissar inspector of the International Brigades and second in authority to Marty (Tr. 495, 633, 685, 813, 831, 856, 910, 995, 1074, 1124–1125, 1253, 1492, 1568, 2976, 2979, 4262; A.G. Exs. 25, 83, 89; R. 87–88).

The Fifteenth Brigade was composed of a number of battalions. The first arrivals in Spain from the United States were formed into the Abraham Lincoln Battalion, which had an original strength of 400 to 500 men. Later arrivals were formed into the George Washington Battalion, but, after severe losses in battle, a single battalion was formed which was first

called the Lincoln-Washington Battalion, and later the Abraham Lincoln Battalion (Tr. 298, 629, 1074, 2433–2434, 3444, 3449–3450; A.G. Ex. 10; R. 88). Since the Fifteenth Brigade was often referred to in the United States as the Abraham Lincoln Brigade, we will for convenience refer to the two American battalions as the Abraham Lincoln Brigade (Tr. 629, 1074, 2435, 3444, 3447–3450, 4084; A.G. Ex. 10; R. 88).

At an enlarged meeting of the American Communist Party's National Committee (or Politburo, as it was also called) in 1936, Earl Browder, the Party's national chairman, stated that the Communist International had ordered the Communist Parties throughout the world to furnish soldiers for an international brigade in Spain; that the American Communist Party had been assigned a quota of men; and that it would obey this order (Tr. 2617, 2624; R. 1).[3] Browder stated that A. W. Mills, a high Party functionary and a member of the Politburo, would be put in charge of the political preparation of those going to Spain (Tr. 2617, 2751–2752; R. 1). The Party would seek to recruit left-wing socialists and others with similar views, but the battalion was to be overwhelmingly Communist in personnel (Tr. 2617–2618, 2622; R. 1). The formation of the Abraham Lincoln Brigade was discussed at National

[3] The findings of the Board cited on pp. 7–17 of the Statement are in that part of the Recommended Decision of the hearing examiner (R. 1–74) which were specifically adopted by the Board (R. 88–89).

Committee meetings at which John Lautner was present and questions concerning the Brigade's organization, recruitment of members, financing, and other support were also discussed in Central Committee plenums (Tr. 83–86; R. 1–2).

Browder and William Foster, then a member of the National Committee, in their reports to the Committee, constantly reiterated that the Brigade was a Communist Party responsibility and that the overwhelming majority of its members were Communists (Tr. 2706, 2715; R. 2). District organizers of the Party were ordered to furnish a certain number of men to go to Spain (Tr. 2707; R. 2). Pressure was brought to bear upon Party members to respond by stressing that this was a Party obligation (Tr. 2707–2710; R. 2).

High Party functionaries went to Spain themselves for a number of purposes, such as to handle organization and finances of the Brigade (Tr. 2636; R. 2–3), to work with the Soviet secret police in Spain (Tr. 2621–2622, 2680–2681; R. 3), to strengthen the morale and Communist consciousness of the men fighting there (Tr. 2623; R. 3), and generally to advance Communist interests in Spain (Tr. 2624; A.G. Ex. 12; R. 3).

Six of the witnesses presented by the Attorney General, Gladnick, Harris, Hecht, Herrick, Horan, and Maken, had gone to Spain to serve in the International Brigades. All, with the exception of Harris,

were Party members at the time. Each of the witnesses who went to Spain, went under sponsorship of the Communist Party (Gladnick: Tr. 1476–1483; R. 5; Herrick: Tr. 482–483; R. 3–5; Maken: Tr. 707–711, 721; R. 6–8; Horan: Tr. 1162, 1164–1165, 1169; R. 8–9; Harris: Tr. 1938–1948, 2041; R. 10; Hecht: Tr. 2420; R. 8). For example, Herrick, who was a Young Communist League member, after indicating his desire to fight in Spain, was taken to Party headquarters for interviews with a section organizer, a Comintern representative, and other Party members (Tr. 481–482, 1478; R. 3–5). After Herrick's Party reliability had been vouched for, he was ordered to report to a guarded hall in lower Manhattan for training and drilling with a number of other men (Tr. 483–484, 488; R. 3–5). Strictest secrecy was maintained and the group was addressed by a Comintern representative and other Communists who had fought in Spain (Tr. 484–485; R. 3–5). Some of these talks concerned the role of the Soviet Union in Spain and indicated that the group were going to fight in Spain for the policies of the Party and the Communist International (Tr. 486, 1483; R. 4). Arrangements for Herrick's trip to Spain were made by Intourist, a Soviet Union tourist agency (Tr. 488, 491–492; R. 4). Before the group left, Earl Browder told its members that they were going to be forged in the fire of combat and that upon their return to the United States they would be in the forefront of the struggle for American

Communism; that they would no longer be theoretical Communists but would be true fighters for it (Tr. 1483–1484; R. 4). The experiences of each of the other witnesses of the Attorney General who went to Spain were similar (see R. 3–10).

This testimony is supported by considerable documentary evidence. The official organ of the Comintern's Executive Committee in May 1938 stated that the International Brigades were selected units formed of anti-fascist volunteers in reply to the call of the Comintern to render practical aid to the Spanish people (A.G. Ex. 5; R. 13). The official report of Earl Browder to the Party's Central Committee in July 1937 emphasized the high percentage of Party members in the Brigade (A.G. Ex. 3; R. 14). Browder's report to Party functionaries in December 1937 stressed that functionaries should continue to maintain the Brigade by supplying replacements and recruits and that it was the duty of the Communist Party to do so (A.G. Ex. 6; R. 14).

While in Spain the Abraham Lincoln Brigade had an official organ called the *Volunteer for Liberty* (Tr. 795, 806; R. 17). This paper was controlled by the American Communist Party and reflected its policies (Tr. 804–808, 815–819, 830–833; R. 16–17). In addition, Communist publications were predominant in the reading material which was furnished the men in the Abraham Lincoln Brigade, and included the American and British *Daily Workers* (Tr. 1218–1219; R. 19),

New Masses, The Mid-West Daily Record, The People's World (Tr. 1219; R. 19), *Inprecor* (Tr. 519, 835, 2440; R. 19), *The Moscow Daily News* (Tr. 835; R. 19), and a great deal of literature published by the Spanish Communist Party including pamphlets of speeches by leading Communists (Tr. 1219; R. 19). One witness, Horan, testified that not until the end of the Spanish war did he see anything but "Party-line publications" while in Spain (Tr. 1219–1220; R. 19). The Party literature was normally brought to the political commissar, who distributed it to the men (Tr. 1220–1221; R. 19).

Such non-Party literature as was received was censored. Witness Maken had the duty of censoring magazines from the United States and England such as *The Saturday Evening Post, Collier's,* and *Harper's,* before they were distributed to the troops (Tr. 798–800, 833–834; R. 19). Censorship was intended to remove any unfavorable reference to the Soviet Union, the international Communist movement, or the Communist Party (Tr. 833–834; R. 19–20). The mail of the individual Brigade members was also censored (Tr. 510–513; R. 20). Herrick was assigned to the task of removing all criticism of Communist policy in Spain and he performed his work under the direction of a Comintern agent and a high functionary of the German Communist Party (Tr. 501, 551–552, 695–696, 1245; R. 20).

Members of the Abraham Lincoln Brigade were disciplined for dissidence or breaches of Party discipline

and in some instances expelled from the American Communist Party for their actions in Spain. For example, Herrick had begun to express certain political doubts as to the role of the Party in Spain and was called in by his superior and warned to be a "good boy" or to suffer the consequences; Herrick understood this to mean that he should no longer oppose Party views or he would be jailed and possibly executed (Tr. 508–510; R. 21). Herrick was subsequently assigned a task in which he could prove his Party loyalty (Tr. 511–513; R. 21). Gladnick was told by John Gates, a high Party functionary and a Brigade political commissar (Tr. 1257; R. 22), that an individual had been executed because he criticized the Party and the Communist movement (Tr. 1534–1535; R. 22). Other individuals were disciplined for joining a rival labor union (Tr. 1213–1214, 1216–1217, 1237, 1245–1255; R. 22–23), or for making critical remarks about Communist activities in Spain (Tr. 845–859, 963, 1089–1090, 1216–1217, 2045–2046; R. 23).

As an aspect of Communist discipline and indoctrination, political commissars, who were overwhelmingly Communist, functioned throughout the brigades and on every level of command in the Fifteenth Brigade (Tr. 496, 656, 686, 745–746, 1053–1056, 1207–1208, 2435–2436, 3943–3944; R. 23–29). The commissar system was modeled after that of the Soviet army (Tr. 496, 745–746, 1215, 1492; R. 24). The commissar was the political head of the military unit and, although military commanders had supremacy in military matters, they were in the final analysis under

the supervision and control of the commissar (Tr. 496, 747; A.G. Ex. 5 (pp. 448–454); R. 26). The commissar's function was primarily to assure that the soldiers were properly indoctrinated politically (Tr. 496, 656, 686, 1053–1056, 1207–1208, 2435; R. 26).

A number of political commissars in the Brigade, including those on the highest levels who were also Communist Party members, later became leaders or members of petitioner. These included Joe Brandt, Archie Brown, Fred Keller, John Gates, and at least 17 others (*e.g.*, Brandt: Tr. 824, 826, 861, 1076, 1080; Brown: A.G. Ex. 52; R. 29).

Communist Party members became leaders in the Brigade immediately upon arrival in Spain either as military commanders or as political commissars (Tr. 745; R. 29); these commissions and titles had been awarded by the Party in New York (Tr. 495, 941–942, 1490–1491; R. 29). The first military commander of the Abraham Lincoln Brigade was a Party member, but he was summarily removed and replaced by a Party functionary who had come directly to Spain from Moscow (Tr. 649–650, 748, 764–765; R. 29–30). Subsequent commanders of the Brigade were also Party members (Tr. 748, 764–765, 789–791, 985–986, 1496, 1649–1650; R. 30). Such officers were referred to in Spain as "ninth floor generals,' referring to the ninth floor of the Party headquarters in New York where the Politburo was located (Tr. 749; R. 29). When a delegation of Brigade soldiers was formed to complain about the tremendous number of casualties in the battle of

Jarama in February 1937, the delegation went to Brigade headquarters and demanded, among other things, that contact be made immediately with the American Communist Party (Tr. 1502; R. 30).

Robert Minor had the job of recruiting agents for Soviet intelligence from among the Brigade members upon orders of a member of the Russian Mission (Tr. 1533–1534; R. 34). Minor told witness Gladnick that the Russians had organized a diversionist group for demolition and behind-the-lines activity, and that when the war was over in Spain its members would be used throughout the world (Tr. 1531–1534; R. 34). John Gates, Bill Lawrence, and Steve Nelson, who were political commissars, also sought recruits who were taught sabotage and commando tactics by Russian experts and then became members of the Soviet Communist Party for use in the future wherever the Soviet Union directed (Tr. 1522, 1533–1534, 1550–1551; R. 34; see also A.G. Exs. 23, 24 R. 35).

The Hearing Examiner concluded, and the Board agreed, that the Brigade was dominated and controlled by the American Communist Party and the Comintern; that its members were subject to, and the recipients of, Communist discipline; that dissidence by Brigade members from Communist policies in Spain was not tolerated and was severely punished; that a political commissar system organized under the leadership of Comintern agents and dominated by Communists functioned throughout the International Brigades for the purpose of maintaining the political reliability of troops from the Communist viewpoint

and of giving Communist indoctrination; that the official organ of the Brigade was controlled by the American Communist Party and reflected Party policy; that Brigade reading material was restricted to predominantly Communist publications, and that other publications were censored by Communists as a means of maintaining Communist ideology in the Brigade; that the mail of Brigade troops was checked to ascertain political dissidence; that Brigade members recruited agents for Soviet intelligence from among Americans in Spain; and that Brigade members were trained by Soviet personnel in Spain and functioned as Soviet agents, all in furtherance of the policies and objectives of the world Communist movement (R. 37–38).

The Party expected that the members of the Brigade returning from Spain would become active in Party work (A.G. Exs. 6, 12, 238; R. 64–68). Witness Horan was told by a Party functionary that many young men were brought into the Party as a result of its aid in Spain; that this was the best that ever happened to the Party in many years; that it was really building up the Party's popular front in the United States; and that, in recruiting persons to go to Spain, the Party was now reaching many people that it had never been able to reach (Tr. 1235–1236; R. 70–71). Witness Maken testified that there was a constant effort to recruit members of the Brigade into the Communist Party (Tr. 752; R. 70). He stated that "[w]e had a slogan ['E]very member of the Brigade a member of the Communist Party' " (Tr.

752; R. 70). Maken said that the consensus of numerous Party meetings in Spain was that the members of the Brigade believed that their experience in Spain would make them better Communists upon their return to the United States, and that, having been tested in action, they could take greater leadership responsibilities in the American Communist Party (Tr. 752–755; R. 70). Similar evidence was given by Gladnick (Tr. 487, 529, 1531–1532, 2141; R. 70).

After having been demobilized about the first week of October 1938, Horan attended a meeting in Spain where Milton Wolff, later petitioner's national commander, was present and Robert Minor, a Communist Party functionary, was the main speaker (Tr. 1225–1226; R. 71). Minor recounted what the men had gone through, stating that it was their duty to use in the United States what they had learned in Spain to advance the American Communist Party and to raise the political education of the American people; that they were now firm Communists, prepared by their experiences to do outstanding work for the Party and mass organizations in the United States; and that they could help form the hard core of a new and better Communist Party in the United States, the hard core upon which the American revolution could be built (Tr. 1226–1228; R. 71). Horan had earlier heard a similar speech given by Andre Marty (Tr. 1257–1258; R. 71).

A dossier was compiled for the Communist Party's records covering the life and activities of each of the men in Spain (Tr. 1083; R. 72). Those whom the Party considered as not trustworthy were disciplined

or expelled (Tr. 861, 1084, 2453–2454; R. 72). On the other hand, Herrick, prior to returning to the United States in September 1937, was given a letter by a high Party functionary and political commissar recommending him for a Communist Party training school in the United States (Tr. 520–522, 524–525; R. 72).

The return of the Brigade from Spain, like its original organization, was controlled and supervised by Party functionaries under the international Communist movement. Maken returned with a group whose finances were supervised by Dave Leeds, formerly the Party's New York State financial secretary (Tr. 800, 860–861; R. 73). Herrick returned with a group pursuant to arrangements made by a Communist Party functionary (Tr. 524–525; R. 73). Gladnick and Horan provided similar evidence (Tr. 1264–1265, 1514–1521; R. 73–74).

The Board found that (R. 73):

> [The American Communist Party] functioned as an integral part of the world Communist movement's anti-Fascist united front in aid of [the Spanish Communist Party] and the Soviet Union in Spain, and that through the utilization of this united front tactic thereby increased its own power and influence within the United States and provided itself with combat-trained cadres for future leadership.

c. The Friends of the Abraham Lincoln Brigade. During the time the International Brigades were operating in Spain, an organization called the Friends of the Abraham Lincoln Brigade was operating in

the United States for the purpose of raising funds to finance the operations of the Abraham Lincoln Brigade (Tr. 671, 3530–3531; A. G. Ex. 102; R. 93–94). Its officers and staff members were largely Party members and functionaries, including David McKelvy White and Phil Bard who had returned early from Spain to engage in this work (Tr. 671, 3696; Bard: 57, 518, 542, 598, 618, 2329–2330, 2633; White: 229, 2700, 2759; R. 93). The Friends functioned in conjunction with the Party and were supported by the Party organization (Tr. 229, 671, 3530–3531, 3969; A. G. Ex. 102 R. 95).

Party funds were given to the Friends to be distributed to men returning from Spain (Tr. 527–529; R. 93). The Friends also provided the Brigade's veterans with clothing, medical and dental services, and legal assistance (Tr. 527–528, 862–863, 1520–1523, 2442–2443, 3048, 3212–3215, 3510; R. 94). For example, Hecht and Gladnick, who were Party members, were furnished legal aid when, upon re-entering the United States, they were detained by Immigration authorities (Tr. 1520–1523, 2441–2443; R. 94). Brigade veterans were sent through the organization to the Party's resort camp, Camp Beacon, which was also used for the Party's National Training School (Tr. 529–530, 4198–4199; R. 93). Fund raising affairs and rallies were conducted jointly by the organization and the Party in which Brigade members, some of whom were also Party members like Harris, Herrick, and Maken, participated (Tr. 670–672, 870–872, 2054–2055; A.G. Ex. 102; R. 93–94).

The Friends also used Brigade members to promulgate Party progaganda. One example of this was described by witness Herrick with respect to a statement for publication prepared for *Life* magazine. A Friends' publicity agent rejected Herrick's statement that he had gone to Spain as a member of the Communist movement and told him to say rather that he had gone because he was Jewish and wanted to join in the fight against fascism (Tr. 537–538; R. 94). Herrick also testified that he was directed to make speeches and to say things that were not true (Tr. 670–672; R. 94). Witness Harris was told by a member of the Friends that his letters from Spain had been read at Party and other meetings for their propaganda value (Tr. 537–538, 670, 672, 2054–2055; R. 94).

The Board concluded (R. 95):

> The Friends of the Abraham Lincoln Brigade was an organization connected with the Communist Party which functioned to raise funds and provide services in connection with the Party's program involving the Abraham Lincoln Brigade and also functioned as a propaganda outlet for the Party with respect to this operation.

In December 1939, upon its formation, petitioner took over the responsibilities of the Friends insofar as rehabilitation of veterans was concerned and the Friends passed out of existence (A.G. Exs. 59, 102; R. 95).

2. *The Veterans of the Abraham Lincoln Brigade.* Petitioner, except for honorary members, is an organization whose membership is composed exclusively

of veterans of the Abraham Lincoln Brigade (Tr. 141–142, 2639–2640, 2774–2775, 3334, 3591, 4297–4298; R. 95, 121). It was officially formed at what is known as the "Third National Convention" of the Veterans of the Abraham Lincoln Brigade, which took place on December 23–24, 1939.[4] As originally formed, petitioner's constitution provided for four national officers, namely national commander, adjutant commander (which never functioned), secretary-treasurer, and editor of its official organ, *The Volunteer for Liberty* (Tr. 3627–3628, 4034; R. 106). The organization also had a National Executive Committee, which, according to its constitution, exercises authority over petitioner between national conventions (A.G. Exs. 59, 62, 104; R. 107). The organization's constitution provided for local posts to be organized and maintained in various cities throughout the country (A.G. Ex. 59; R. 102). These posts operated under the direction of petitioner's national headquarters in New York City (Tr. 1358, 1364–1365, 1402, 2067–2070, 2512–2513; R. 102). The posts remaining in existence at the time of the hearing included those in Chicago, Los Angeles, New York, and San Francisco (Tr. 1098, 1359, 1368, 1372, 1400, 1403; A.G. Ex. 218, 220, 224; R. 102).

a. Control of Petitioner by the Communist Party. Petitioner was actually started by the Party in 1938 and 1939 before the veterans returned from Spain.

[4] The organizing convention was actually petitioner's first, the earlier ones presumably having been held by the Friends of the Abraham Lincoln Brigade (Tr. 4008–4009; A.G. Ex. 59; R. 100).

Louis Budenz, a leading official of the American Communist Party, testified that the Politburo had a series of discussions in 1937 and 1938 concerning the organization and direction of petitioner (Tr. 2625–2629; R. 95). As a result, beginning in late 1937, the Politburo issued several directives for petitioner's organization (Tr. 2626, 2629; R. 95). Members of the Politburo and representatives of the Communist International (which ran the world Communist movement) were appointed to aid in the formation and supervision of petitioner and these individuals reported periodically to the Politburo on their activities in carrying out this assignment (Tr. 2618, 2625–2629, 2632–2634, 2641–2642, 2674, 2750–2753, 2759–2760; R. 95). Petitioner's constitution was discussed at Politburo meetings in 1939 and, after submission to the Party's lawyers, was approved by the Politburo (Tr. 2679–2680; R. 96). John Lautner, another Party "functionary"[5] was present at a central committee meeting of the Party in 1938 when Earl Browder reported on the plans for setting up petitioner (Tr. 141–142; R. 96).

In early 1938, Budenz was the editor of the *Mid-West Daily Record* in Chicago, which was a Party newspaper, and its associate editor was Paul Burns, another Party official (Tr. 2626–2627; R. 96). Budenz was told that Burns had been chosen national commander of petitioner (Tr. 2626–2627; R. 96). Burns informed Budenz that petitioner's original officers had been handpicked by a Comintern repre-

[5] Lautner defined a "functionary" as a Party member under complete Party discipline (Tr. 51).

sentative in New York and that he (Burns) was in touch with Politburo and Comintern representatives (Tr. 2756–2757; R. 96). Budenz, in his position as a member of the Party's Illinois State Committee, also received other reports on the progress of petitioner's organization in the Chicago area (Tr. 2613, 2625, 2627–2629, 2757–2759; R. 96). During petitioner's formative years in 1937 and 1938, the Party advanced money for meetings, publications, and other needs (Tr. 2679–2680, 2738–2739, 2759–2760; R. 96). Early in 1939, Morris Childs, the Illinois secretary of the Communist Party, addressed petitioner's Chicago post and stated that it could now be told that the Party had recruited the men to go to Spain and had also organized petitioner (Tr. 1269–1270; R. 99).

Witness Herrick, a member of the Young Communist League at that time, testified that his first contact with petitioner took place in early 1938 when, at the request of a Party functionary he attended a meeting for returned veterans, at which the functionary presided (Tr. 533–535; R. 98). At this meeting, Steve Nelson, who was a former political commissar and who had been made a member of the Party's Central Committee, settled a controversy which arose (Tr. 535–536; R. 98). Herrick testified that Nelson's statement was interpreted as an order from the Party because he spoke with "ultimate authority," since all present knew him to be a member of the Party's Central Committee (Tr. 687–688; R. 98). Witness Maken was told upon his return to the United States that before he could join petitioner he must see the

secretary of the Party's National Control Commission (Tr. 861, 865–867; R. 98). When Maken went to Party headquarters, he was told that he would have to work his way back into the Party by participating in Party organizations such as petitioner because of minor disagreements he had had with his Party supervisors in Spain. If after a suitable period his work was worthy and his attitude correct, he could rejoin the Party (Tr. 867–871; R. 99).

The Board found that (R. 100):

> [Petitioner] was formed by, and with the aid of the Party in 1938, prior to the return of the main body of veterans; that the Party established [petitioner] under its control, installing a Party functionary as its National Commander * * *.

In 1939, months prior to petitioner's initial convention, David McKelvy White, a Party member, reported to a meeting of the Politburo in Chicago on the planning for it (Tr. 2759–2760; R. 100). Milton Wolff, who was a Party functionary, opened this convention and was chairman of the convention arrangements committee (A.G. Ex. 59; Wolff: Tr. 144, 151–152, 230, 1226, 1952, 2143–2144, 2509, 2642, 2703, 2753–2754, 3961, 3990–3992, 4126, 4223–4224, 4231; R. 101). White delivered the main report for petitioner's executive committee (Tr. 229, 2700–2701, 2759; A.G. Ex. 59; R. 101).

The convention's Presiding Committee of five persons included David White, the chairman, Milton Cohen, and Vaughn Love, all three of whom were

Communist Party members (Cohen: Tr. 1276–1277, 1334, 1357, 1363; Love: 1231–1232, 1373; R. 101). The Convention Committee consisted of seven persons and included John Robinson, the chairman, Milton Wolff, and Fred Keller, who were Party functionaries (A.G. Exs. 59, 256; Robinson: Tr. 1481, 1564, 1975, 2029, 2073–2075, 2079, 2132, 2191–2192, 2207, 2281–2282, 2289, 2430, 2453; Keller: Tr. 919, 1373, 1950–1951, 1994; R. 101). A national executive committee of nine members was chosen, of whom three, Carl Geiser, Bob Raven, and Archie Brown, were Party members or functionaries (A.G. Ex. 59; Geiser: Tr. 1966–1967; Raven: Tr. 156–158, 163, 177–180, 1975, 2633, 2642; A.G. Ex. 12 (p. 21); Brown: Tr. 272; R. 101). Unanimously elected as national officers were Milton Wolff, national commander, Luchell McDaniels, adjutant commander (an office which, as noted above, has never functioned), Gerald Cook, secretary-treasurer; and Leonard Levinson, editor of the *Volunteer for Liberty*; Wolff and Levinson were Party functionaries (A.G. Ex. 124 (pp. 13, 56); Levinson: Tr. 144, 366; R. 101). Wolff has been petitioner's national commander since 1939 (Tr. 3627, 4034; R. 101, 107).

The Board concluded that (R. 105):

> [Petitioner's] initial convention was held under the domination and control of the Party and that its principal officer (National Commander), who had been installed by the Party, was succeeded at this Convention by another Party functionary * * *.

Besides the national commander, the other principal officer of petitioner is the executive secretary, who was formerly, as provided in the petitioner's constitution, designated the secretary-treasurer (A.G. Ex. 59; R. 106). Indeed, now and for the past few years, the executive secretary has been the principal operating officer, handling finances as well as most other organizational business (Tr. 4079; R. 106). Since 1940, this office has been occupied during the years indicated by the following Party members or functionaries: Irving Goff, 1940 to 1941 (Tr. 144–145, 152, 197–198, 200, 364–365, 372, 530, 1873–1875, 1927–1928, 2140, 2298, 2327, 4037–4038, 4175–4176, 4244, 4286; A.G. Exs. 22, 34, 69, 70, 78–79, 97 (p. 1), 145, 193, 206); Jack Bjoze, 1942 to 1943 (Tr. 156–157, 176, 359, 873, 1370, 1461–1462, 1970–1971, 1980, 2020, 2088, 2090–2092, 2101–2104, 2107, 2127, 2143, 2181, 2201, 2215, 2225, 2300–2303, 2313, 2367, 2395–2397, 2458, 2467, 2504, 2801–2804, 4044; A.G. Exs. 64, 65, 71–76, 78–80, 97, 136–138, 141, 145, 195, 143, 209); Harold Smith, 1944 (Tr. 227–229, 272, 2511–2512, 2659, 2692, 3717–3720, 3723, 4047–4048; A.G. Exs. 2, 44, 59, 60, 103 140, 150, 154, 155); Leonard Lamb, 1944 to 1945 (Tr. 144, 154, 367–368, 372, 861, 1086, 2071, 2072, 2082, 2096, 2187, 3890–3894; A.G. Exs. 140, 142 (p. 2), 145); David McKelvy White, 1945 (Tr. 3725–3726; A.G. Exs. 22–53); Edward "Frenchy" Robinson, 1945 (Tr. 144, 154, 368, 505, 923–925, 1518–1520, 1948, 1961–1962, 1994, 1999, 2009–2011, 2077–2079, 2082, 2190–2191, 2291–2292, 2506–2508, 4049–4050; A.G. Exs. 66, 75, 101, 145, 189); Moe Fishman, 1950 to present

(Tr. 1944–1945, 1974, 1975, 2002–2007, 2027, 2087–2089, 2097, 2201, 2202, 4072–4073, 4079, 4272, 4337–4338; R. 105, 107). Wolff testified that he got Fishman the position of executive secretary, which has not been an elective post for many years (Tr. 4337–4338; R. 107).

The following Party representatives have been on petitioner's National Executive Committee: Vic Allen, Barney Bailey, Alvah Bessie, Moe Fishman, Louis Gayle, Carl Geiser, Irving Goff, Daniel Groden, Fred Keller, Felix Kuzman, John Gates, Vaughn Love, Edward Robinson, Milton Wolff, Archie Brown, and David McKelvey White (A.G. Exs. 9, 59, 62, 97, 144, 145; P. Ex. 24; Allen: Tr. 2503–2504; Bailey: Tr. 1180–1185; Gayle: Tr. 1332–1336; Kuzman: Tr. 144–156, 2633; R. 107). In 1952, petitioner's nine-member Executive Committee included six Party members, of whom four were functionaries: Irving Weissman, Steve Nelson, Harold Smith, Vaughn Love, Daniel Groden, and Alvah Bessie (A.G. Ex. 103; Weissman: Tr. 154, 335; Groden: Tr. 2505, 2513; Bessie: Tr. 907–911, 2635; R. 29, 49, 68–70, 99, 101, 107, 114, 116).[6]

The editor of petitioner's official organ, the *Volun-*

[6] Petitioner has conferred honorary memberships and appointed honorary officers. For example, at the 1939 convention, an Honorary Presidium of ten persons was selected, six of whom were functionaries of the Committee and/or the Spanish Communist Party (Tr. 361–362, 1593, 2135, 4080–4082; A.G. Ex. 59 (p. 1); R. 103). Gerhart Eisler, Earl Browder, Robert Minor, Paul Robeson, and Joseph North were also honorary members of petitioner and, except for Eisler, who was a Comintern agent, all were Communist Party members or functionaries (Tr. 361–362, 2094–2095, 2125, 2211, 4080–4082; A.G. Exs. 59, 143 (p. 7); *e.g.*, Robeson: Tr. 1980, 2092, 2688–2689; North: Tr. 132, 1564, 836, 4081–4082; R. 103).

teer for Liberty, which has been issued on an irregular basis, was from 1939 to 1941, Leonard Levinson; during 1941, Al Prago; and during 1946 and 1947, Harold Smith. They were all established Party functionaries (Tr. 1306, 1545, 2635, 3236; A.G. Ex. 59; Prago: Tr. 145, 153, 193, 374, 1889–1890, 1929–1930, 1972, 2516, 2839; R. 101–102, 106). Levinson, Prago, and Smith also constituted the editorial board in 1944 (Tr. 3822–3833, 3988, 4079; A.G. Ex. 195; R. 106).

Edward Horan, then a Party member, was in 1939 editor of the Chicago supplement of the *Volunteer for Liberty,* but he was supervised by a committee which included a Party functionary, and, in actuality, Horan had nothing to say about the content of the publication (Tr. 1306; R. 106–107). Syd Harris, who at the time of the hearing was secretary of petitioner's Chicago post, attended Communist Party meetings with Horan and was a Party member (Tr. 1372–1373, 1400–1401; R. 107). Horan testified that at various times there was a person in the Chicago post designated as a Party representative who would bring instructions from the Party (Tr. 1355, 1358; R. 107). At a meeting held in petitioner's offices in 1941, Alfred Wagenknecht replaced Sigurd Simonsen, who was such a Party representative, with Moe Teitelbaum (Tr. 1334, 1357, 2694–2695; R. 107). Wagenknecht was a Party functionary of very long standing who was then a member of the Party's Illinois State Committee but not of petitioner (Tr. 1333–1334, 2694–2695; R. 107). Among other Party representatives in the Chicago post were Izzy Tivin, Ernest Romero, Gil Lang, and Milton Cohen (Tr. 1357; R. 107). At least one Party representative was present at every

meeting of the Chicago post which Horan attended (Tr. 1355, 1357–1358; R. 107–108). Each was conspicuous by his manner and his statements, such as by giving instructions that the Party had decided that petitioner should undertake certain activities (Tr. 1276–1277, 1352, 1355, 1357–1358, 1363, 1372–1373, 2694–2695; R. 107–108). During Horan's membership, the Chicago post never functioned autonomously; the post received orders principally through the Chicago District and Illinois State organizations of the Party (Tr. 1282, 1331, 1333–1334, 1336, 1358; R. 108).

The Board concluded (R. 109):

> [W]ithout exception [petitioner's] principal active officers, since its inception, have also been functionaries and representatives of the Party, as have a substantial number of its responsible active subordinate officers.

Representatives from petitioner reported to the Party's National Committee after petitioner's formation and during the entire time Budenz was in the Party until 1945 (Tr. 2629, 2641–2643, 2759–2760; R. 110). For example, Budenz testified that at an enlarged meeting of the Party's National Committee in early 1940 Milton Wolff reported on petitioner's 1939 convention (Tr. 2754; R. 110). Lautner also testified that during the Party's National Committee meetings in 1940 and 1941 Robert Minor and others reported concerning petitioner (Tr. 361; R. 111). Such reports on most occasions were given by a Party mem-

ber who was also a member of petitioner (Tr. 2641; R. 110), but on occasion a non-member of petitioner made the report, such as Roy Hudson, who functioned as a Politburo representative to petitioner (Tr. 2632–2633, 2641–2642; R. 110). Budenz testified that it was common custom for the Politburo to have a representative working with members of other organizations (Tr. 2642; R. 110).

The Board concluded (R. 110–111):

> There were constant reports to the [Communist Party] through the years on [petitioner], some specifically devoted to it, and others including it as a part of a broader report of Party activities.

Membership in petitioner was respected in the Communist Party because it signified that an individual had proven himself and his Party dedication by going to Spain. Lautner testified that Party leaders singled out members of petitioner as the "flower" of the Party, the "force that fought and proved their loyalty and steadfastness in the face of danger for Party ideology" and who had demonstrated loyalty in carrying out Party assignments (Tr. 365; R. 113). He testified that Earl Browder and other Party leaders frequently emphasized that, since petitioner's members had proved themselves as devoted and loyal members of the Party, they deserved special consideration with respect to promotion (Tr. 151, 365, 1226, 1236, 1269, 1352, 1483–1484; R. 113).

In fact, this consideration was given. Lautner testified that petitioner's members had been appointed to the Party's National Committee, become national secretary of the Party's Control Commission, become district or national organizers or regional directors of Party regions, and become Party functionaries and officials in the various state and district units of the Communist Party (Tr. 143–155; R. 115–116). Budenz likewise testified that Steve Nelson, a member of petitioner, was chosen for the Party's National Committee, Paul Burns (see p. 21 above) was made associate editor of the Party's *Mid-West Daily Record,* and Alva Bessie, another member of petitioner, became a writer in Hollywood through the Party apparatus there and obtained a position on the editorial staff of *New Masses,* a Party publication (Tr. 907–911, 2634–2635, 2682–2683; R. 114). In 1946, Nelson was made Chairman of the Party's Nationality Groups Commission and discussed Party problems with members of petitioner at Party headquarters in New York City (Tr. 359; R. 112).

Budenz's and Lautner's testimony was corroborated by the experiences of witnesses Horan and Huber. For example, Horan was told by the Party prior to going to Spain that it would be a basis for further recognition and advancement (Tr. 1236; R. 113). Upon his return from Spain, he attended a meeting of petitioner where Morris Childs, the Party's Illinois State chairman, stated that petitioner's members would receive recognition for what they had done in Spain (Tr. 1269; R. 113). During this speech

Childs listed many examples of petitioner's members who had been given important posts in the Party, including positions with Party papers or as organizers, and Childs stressed that these men were "not arm chair revolutionaries and that they would put new spirit into the Communist Party" (Tr. 1236, 1269, 1276–1277, 1363–1364; R. 113–115).

Petitioner, in its official organ the *Volunteer for Liberty,* emphasized the participation of its members as Party officials in the Party's 1944 National Convention. This participation included the election of petitioner's members to the presiding committee which also served as a nominating committee, to the resolutions committee, and as vice-presidents and members of the Party's National Committee (A.G. Ex. 149 (p. 4); R. 111).

In addition to Party positions being given to petitioner's members, Budenz testified that the Party branches were instructed to attempt wherever possible to obtain employment for petitioner's members in unions, offices, or factories where a Communist fraction or functionary was located (Tr. 1546, 2682–2683; R. 116). An example of such aid was given by the witness Horan. In January 1940, Dave Mates, a Party organizer for the Party in Cook County, Illinois, arranged a job for Horan as a union organizer in Iowa through the Party there (Tr. 1289–1293, 1303–1304; R. 116–117). Horan, although not then a member of the Party, having left it in the summer of 1939, was given this job because his background and experience in Spain were known, and Mates

believed him to be "all right" and felt he could be brought back into the Party (Tr. 1291–1292; R. 117). Similarly, witness Herrick obtained a job in the furrier's union through the Party (Tr. 528–533, 543–545; R. 117).

In late 1946, Huber attended the Fifth National Convention of petitioner in New York City, which opened with the singing of Spanish and Red Army songs (Tr. 1976–1977; R. 112). Seated on the stage were Milton Wolff, Paul Robeson, Benjamin Davis, and representatives of Poland, Czechoslovakia, Yugoslavia, and the Soviet Union (Tr. 1977–1978; R. 112). Davis brought greetings to this convention from the Party's National Committee, of which he was a member, and Paul Robeson, also a Party member, told the delegates to be proud of being Communists (Tr. 1976–1977, 1980–1981, 2092; A.G. Ex. 143; R. 112).

The Board concluded that (R. 113):

> [Petitioner] maintains a rapport with the Party, primarily involving activities of its officers and a substantial segment of its membership who are Party members, which places [petitioner] in a knowledgeable position of subservience to Party control and Party purposes.

Party control was facilitated by the fact that petitioner, like the Party, was a disciplined organization, which required its members, under penalty of expulsion, to accept and implement its policies. For example, in 1939 witness Maken and a few other members of petitioner believed that, during the period

of the Hitler-Stalin Pact, Hitler should still be as actively opposed as Franco had been (Tr. 889–890; R. 117). This position was contrary to petitioner's policy, which conformed with the policy of the Communist Party (see pp. 36–39 below). Maken's group formed an organization composed of the few anti-Fascist and anti-Communist veterans in petitioner, but after a few months the organization was dissolved (Tr. 890–892; R. 117). Maken's activity, however, led to his expulsion from petitioner; he was given no notice or hearing concerning his expulsion and was not present at the meeting which expelled him (Tr. 892; R. 117–118). Significantly, a notice that he had been expelled was published in the *Daily Worker* (Tr. 893, 1105; A.G. Ex. 85; R. 118). "Frenchy" Robinson told Maken in 1945 that he (Robinson) could get Maken reinstated in the Party and also in petitioner, since he was then high in the Party and, therefore, his recommendations to petitioner were accepted (Tr. 924–926; R. 112)).

Maken also testified that another member of petitioner was expelled after Fred Keller, a Party functionary and member of petitioner, presented evidence at a meeting of petitioner that the member disagreed with the Party (Tr. 919–921; R. 118–119). Witness Gladnick testified that petitioner got him a job in a union local which he immediately lost after he refused to join the Party (Tr. 1524–1526, 2500–2501; A.G. Ex. 59 (p. 23); R. 118).

Witness Hecht testified that petitioner regarded as "sound members" persons whom the Party accepted as sound (Tr. 2500–2501; A.G. Ex. 59 (p. 23); R. 118). If petitioner's members disagreed with Party positions, they were violently attacked. For example, witness Gladnick was called a "Trotskyite," a "stool pigeon," and a "deserter" when he disagreed with Party leader Steve Nelson at one of petitioner's meetings (Tr. 1529, 1588; R. 119). And petitioner followed the Party's procedures of isolating individuals who disagreed with Party positions (Tr. 919–921, 1529, 1583, 1588, 2126–2129, 2132, 2690–2694, 3132; A.G. Ex. 145 (p. 5); R. 119–120).

Petitioner also received, and responded to, direct Party discipline. Witness Lautner, as a member of the Party's Review Commission in 1948, handled charges brought before this disciplinary body by Robert Raven, who had been blinded in Spain. Raven charged petitioner with failing to discharge certain obligations concerning his financial support. He charged that he had been used as a tool by the Party upon returning from Spain, having been exploited on a national tour in which he raised many thousands of dollars, and was not being cared for financially. Lautner, as a Party official, summoned Jack Bjoze, a Party representative within petitioner, and the latter promised the Party that petitioner would fulfill its obligation. Subsequently, a flower shop was purchased for Raven and his financial security guaranteed (Tr. 156–157; R. 120–121).

Lautner also testified that the Party called upon petitioner to carry out certain functions such as furnishing members to participate on picket lines and that petitioner, in response, did as directed (Tr. 142–143; R. 121). Budenz testified about instructions which the Politburo issued to petitioner concerning a drive to increase the circulation of the *Daily Worker*. Roy Hudson told the Politburo in the summer of 1941 that petitioner would be ordered both to take the intiative in this drive and to stimulate Party membership; petitioner followed these instructions (Tr. 156, 523, 1323, 1335–1341, 1358, 2653–2654, 2657–2659, 2742–2743; A.G. Ex. 237; R. 111, 181). Witness Maken had to be cleared by the Communist Party before he was allowed to join petitioner (Tr. 924–926; R. 121).

The Board concluded that (R. 121–122):

> [T]he preponderance of evidence establishes that [petitioner] is a disciplined organization after the matrix of the Party, and that it has and continues to be subject to and responsive to Party discipline, primarily through its principal officers and a substantial portion of its membership who are Party members and functionaries.

The Board considered extensive documentary evidence reflecting the views and policies of petitioner and of the Communist Party (R. 131–178). Their positions, for example, coincided concerning the entry of the United States into World War II prior to, during, and after the Hitler-Stalin Pact and the German attack on the Soviet Union (R. 132–147); the release

of Party leader Browder from imprisonment (R. 147–148); the Government of Finland (R. 150–151); American foreign policy concerning Spain, Latin America, China, and Greece (R. 152–167); the Marshall Plan (R. 167–170); the Korean War (R. 170); Congressional committees investigating Communism (R. 171); Gerhart Eisler's deportation (R. 172); and internal security legislation (R. 173). Petitioner, on the other hand, offered no evidence of instances where its official publicized policy conflicted with the policy of the Communist Party and its national commander, Milton Wolff, testified that petitioner had never taken a stand in opposition to the Soviet Union or critical of the Communist Party or its leaders (Tr. 4238–4284, 4308; R. 178).

Petitioner adopted policies at the direction of the Communist Party and took steps to implement those policies pursuant to such direction. Prior to the Hitler-Stalin Pact, announced on August 24, 1939, both the Communists and petitioner were strongly "anti-fascist" and anti-Hitler (Tr. 125–126, 322–324, 874–875; A.G. Exs. 8, 59 (p. 2); R. 132–133). When the Soviet Union and Germany signed the non-aggression pact, a direct result was a complete reversal in Communist Party policy regarding fascism and the impending war (Tr. 388–390, 879–880; A.G. Ex. 36; R. 133–136). The Party now claimed that the Soviet Union had, by making the Pact, contributed to the peace of the world and strengthened the position of the "working class and all true democratic forces" (A.G. Ex. 36; R. 133–135). When war was

declared by Germany on Poland only a few days later on September 1 and Britain entered the war on September 2, Party leaders characterized the war as "imperialist" and an "unjust" war, and adopted the slogan: "Keep America Out of the Imperialist War" (Tr. 903–904; R. 135).

Immediately, petitioner also characterized the war as an imperialistic war. For example, Maken attended a meeting of petitioner after the invasion of Poland and shortly after the Hitler-Stalin Pact was signed. At the meeting the Pact was explained and petitioner's members were requested as Spanish veterans to carry out their responsibilities to assure the public that the Soviet Union was still the stronghold of social progress (Tr. 881; R. 136). A subsequent meeting passed a resolution stating that the conflict between Germany and France and Britain was an imperialist war and that petitioner would do its best to prevent the involvement of the United Staes (Tr. 883–886; R. 136).

Shortly after the Hitler-Stalin Pact was signed, Gladnick went to petitioner's offices and, in the presence of Milton Wolff, inquired when petitioner's next meeting would be held since he wanted to find out where petitioner stood on this question. He was given a mimeographed copy of a manifesto to read and was told that anyone who did not subscribe to the manifesto could not attend future meetings of petitioner (Tr. 1540–1541; R. 136–137). The manifesto said that the war was not one for the freedom of Europe

but was an "imperialist war" and that petitioner would struggle against aid to England and France, the theme being that the "Yanks are not coming" (Tr. 1541; R. 137).

At its initial convention in December 1939, petitioner adopted a resolution, stating "We, Veterans state this is an Imperialist War. * * * Let our Slogan be: Keep America Out of this Imperialist War. The Yanks are not Coming." At petitioner's national convention in May 1941, petitioner's national commander, Milton Wolff likewise urged, "Let us again resolve, with renewed fervor, that the Yanks are not coming * * *" (A.G. Ex. 98 (p. 4); R. 140). Witness Herrick described the change in petitioner's position as follows (Tr. 545–546):

> After Soviet Russia and Hitler's Germany signed the Stalin-Hitler pact, the line of the Party changed overnight from "Collective security against Fascism" to one of "Hands off Fascism" more or less to one where the fight and all the slogans and all the propaganda was against Britain as a bourgeois imperialist government, against the American Government for being as they called President Roosevelt at that time, a warmonger. * * * When the Communist Party changed its line from one of "Collective Security Against Fascism," the Veterans of the Abraham Lincoln Brigade changed its line from "War against Fascism" to "It was an imperialist war and Britain and France and the United States were imperialist powers" and to one of so-called neutrality in this struggle.

Petitioner not only supported the Party's new position, but sponsored or took part in rallies (Tr. 1542–1554; A.G. Exs. 96, 97; R. 138–140), participated in picket lines (Tr. 1312; A.G. Ex. 97; R. 139), provided speakers (Tr. 1309–1310; R. 140), and held street corner meetings (Tr. 1321–1322; R. 140) to support its policies on this issue.

After the German attack on the Soviet Union on June 22, 1941, there was an immediate reversal of Communist Party policy. The war was no longer considered an "unjust, imperialist war"; it was a just war due to the involvement of the Soviet Union (Tr. 330; A.G. Ex. 38; R. 140–143). The Party now advocated American participation in the war, and demanded a second front (A.G. Ex. 39; R. 143–144). Similarly, petitioner immediately launched a campaign for American involvement in what was now a "just" war (Tr. 1322–1323, 2456–2457; A.G. Ex. 30; R. 141). Petitioner called for a second front (A.G. Exs. 40, 99; R. 144–145), and held a fund raising and propaganda affair to advance this demand (Tr. 1349–1350; A.G. Ex. 101; R. 145).

The Board found that petitioner "consistently takes and advances positions on matters of policy which do not deviate from those of the Communist Party and the world Communist movement * * *" (R. 178).

The Party's control of petitioner is reflected by the aid which the Party gave to it. This aid included allowing petitioner's members to solicit funds and sell tickets to its affairs at Party meetings (Tr. 1351–1352, 1546, 2132–2133; R. 122); distributing petitioner's

solicitation cards throughout the Party (Tr. 1284–1287; R. 122); urging and directing all Party members to support petitioner's projects (Tr. 1951–1958; R. 123); and making direct contributions of funds to petitioner (Tr. 1958–1960; R. 123–124). Budenz testified that at National Committee meetings it was stressed that the Party and Party members should support all of petitioner's activities in advancing the Party's interests and ensure that petitioner was financially supported (Tr. 2643–2644; R. 124). Budenz testified that, as *Daily Worker* editor, he was under specific instructions from the Politburo to give publicity to petitioner (Tr. 2664, 2768–2769; R. 124). Lautner testified that decisions concerning support for petitioner were made within the Party's New York State Commissions, and that such support was routine (Tr. 84–86, 174–176; R. 124).

The Board concluded (R. 131):

> Accordingly, we find that the Party from respondent's inception has provided it with material aid and support and that this further evidences that respondent is controlled by the Party and is an organization which operates primarily in the interest of the Party.

The Board concluded that "the overwhelming weight of the evidence" shows that petitioner "is directed, dominated and controlled by the Communist Party * * *" (R. 208–209).

3. *Petitioner's aid and support of the Communist Party.*—As we have noted (pp. 4–5), the United Front technique is one of the main tactical approaches

utilized by the Communist Party throughout the world for extending Marxism-Leninism. The core of this technique is the necessity of the Communists to mobilize the support of many who are not Communists, and this mobilization is accomplished by raising "issues which do not involve pitting communism, but rather involves rallying them against or around another ostensible objective" (Tr. 135–139, 2674–2679; R. 85–86).

The purpose of the Party in forming petitioner was clearly expressed. In December 1938 Earl Browder emphasized at a session of the Party's National Committee that the returning veterans were to be considered a Party cadre who must be integrated into community life to make possible their maximum future contribution to the Party's cause (A.G. Ex. 11; R. 97–98). Budenz concluded, on the basis of the official Party reports made to the Party's National Committee and from other statements of Browder, that petitioner's major purpose was to be an integral part of the Party apparatus and to advance Communist influence in the United States (Tr. 2638; R. 97). More particularly, petitioner was designed to keep alive the struggle for a Communist victory in Spain as a means of influence in Latin America and at the same time providing a young, vigorous group of men to carry out Party programs (Tr. 2638–2640; R. 97). Lautner testified that petitioner constituted an organization from which the Party would draw functionaries for use at all levels and in all types of

organizations (Tr. 151; R. 97). The members of the Abraham Lincoln Brigade were told that they would become leaders in the Communist Party upon their return (see pp. 15–16 above).

The Board found that (R. 100):

> [Petitioner] was established for the purpose of affording the Party a means whereby it could continue its efforts on behalf of Communism in Spain and hence the world Communist movement, and to provide itself with a dynamic organization of tested cadres for utilization in advancing Party programs and objectives in the United States.

In actual operation, petitioner carried out the Party's original purposes. Petitioner's principal and subordinate officers mostly belonged to the Party (see pp. 23–28 above), were subject to Party instructions (see pp. 34–35 above), reported to the Party (see pp. 28–29 above), and were expelled or severely criticised if they refused to accept Party positions (see pp. 32–34 above). On the other hand, petitioner's members received jobs from, and promotions within, the Party (see pp. 29–32 above). The Board found that the promotion of petitioner's members within the Party shows that petitioner "is what the Politburo planned, namely, a Party instrumentality of dedicated, active Party members, to be used to advance the Party's programs and objectives" (R. 113). We have seen (pp. 35–39) that petitioner consistently followed Party policies over many years on numerous issues despite changes in Party positions and that changes in petitioner's policies were by direction of the Party.

Petitioner also provided other kinds of support to the Communist Party. Petitioner worked in coordina-

tion with other Communist mass organizations. Witness Romerstein was educational director of an American Youth for Democracy club to which he was assigned by the Party. Romerstein received a letter from Wolff signed as national commander of petitioner inviting Romerstein's club to participate in various activities on behalf of the Republican forces in Spain and to send delegates to a forthcoming conference on this subject (Tr. 2402–2403; A.G. Ex. 211; R. 179–180). This letter was followed by one from the National Youth Director of the Communist Party to Romerstein as his club's educational director, suggesting that the club avail itself of petitioner's speakers and that it elect a delegate to the conference referred to in Wolff's letter (Tr. 2400–2402; A.G. Ex. 210; R. 180). Romerstein testified that it is a frequent Party practice to utilize the facade of other organizations for the purpose of mailing out literature to recipients who would not be responsive to such literature if sent from the Party itself (Tr. 2425–2426; R. 180).

Witness Horvath likewise testified that it was announced at an Executive Committee meeting of the Party's Yorkville club in New York City in March 1946, that the Party was going to use, as ostensible sponsors for a peace conference to be held in Washington, D.C., its various controlled organizations including petitioner. All Party clubs and branches were to send delegates to this conference (Tr. 2294–2296; R. 180–181).

Petitioner also participated in a campaign to increase subscriptions to the *Daily Worker*. Budenz was present at a Politburo meeting in 1941 at which

Roy Hudson reported on the formation of "Browder Brigades" to increase the circulation of the *Daily Worker* and petitioner was instructed to take a leading role in this drive to set an example for other Party members. Budenz, as editor of the *Daily Worker,* was subsequently given a statement signed by "a group of veterans of the Abraham Lincoln Battalion" which was printed in the *Daily Worker* of August 8, 1941 (A.G. Ex. 237). Budenz testified that the group of veterans officially represented petitioner (Tr. 742–743, 2653–2654, 2657–2659, 2734–2747; R. 181–182). Budenz said that petitioner's aid to the *Daily Worker* was a very definite contribution to the advancement of Party programs, for this publication provides official directives to Party functionaries and followers throughout the United States (Tr. 2734–2738; R. 184).

In August 1941, at a meeting of petitioner in Chicago, Morris Childs the Illinois Party secretary, likewise directed petitioner to work toward building the Party and in particular the Party's press in honor of Earl Browder. He said that petitioner should take advantage of any national sympathy that the Soviet Union had obtained through having been attacked by Nazi Germany. Such a campaign was in fact undertaken, and witness Horan was designated as a lieutenant in the Browder Brigade where he served under a Party functionary who voted as captain of the Brigade (Tr. 1164–1165, 1234–1236, 1269, 1283, 1336–1338, 1341–1342, 1380; A.G. Ex. 100; R. 183–184).

Witness Harris testified that he attended Party meetings where it was decided that petitioner was to be utilized in Party campaigns such as writing the President and the United Nations concerning breaking relations with Franco Spain (Tr. 2085; R. 158). Harris attended meetings of petitioner in which this activity was undertaken (Tr. 2104–2106; R. 158).

Petitioner also participated in Party picket lines upon directions of the Party. For example, Lautner testified that petitioner was directed by the Party to participate in a daily picket line around Foley Square in 1949 during the Smith Act trial of Party leaders. He explained that the Party's New York State organization commission planned a daily picket line where Party controlled organizations were to picket on assigned days, and that petitioner according to this plan picketed Foley Square as directed (Tr. 142–143; R. 121). Petitioner also picketed the White House in protest against the jailing of Eugene Dennis, then general secretary of the Communist Party (A.G. Ex. 156; R. 174); marched in May Day parades (Tr. 1956–1959, 2298; A.G. Exs. 201–204; R. 161); and took part in rallies and other picket lines in support of Party policies (A.G. Ex. 97, R. 139). Witness Huber, a Party member but not a member of petitioner, took part in a picket line of petitioner pursuant to arrangements made at a Party meeting (Tr. 1972–1975, 2016; R. 123). Petitioner also provided speakers for Party functions (Tr. 1274–1279; R. 184); supported Party fund-raising affairs such as picnics, parties, and rallies (Tr. 1330, 1856–

1857, 2027, 2124; R. 184); and made Party literature available for sale in petitioner's offices (Tr. 2219–2221; R. 184).

The Board found that (R. 178):

> [Petitioner] supports, promotes, and implements the policies [of the Communist Party and world Communist movement] and thus renders material aid to the Party and the world Communist movement.

The Board concluded that (R. 209):

> [Petitioner] is primarily operated for the purpose of giving aid and support to [the Communist Party] and the world Communist movement.

SUMMARY OF ARGUMENT

I

The court below correctly sustained the Board's ultimate factual finding that petitioner is a Communist-front organization as defined in the Act.

A. Administrative agencies have considerable discretion in construing the Act they are charged with administering. *E.g., National Labor Relations Board* v. *Hearst Publications, Inc.,* 322 U.S. 111. The determinations of such agencies are entitled to even greater weight as to findings of fact. Moreover, Congress charged the courts of appeals with primary responsibility for ascertaining that the findings of the Board are sufficiently supported. See *National Labor Relations Board* v. *Pittsburgh Steamship Co.,* 340 U.S. 498. These well-established principles were specifically applied to this Act by the Court in *Com-*

munist Party v. *Subversive Activities Control Board*, 367 U.S. 1, 28–29, 69, 130–131.

The Board found, on the basis of ample evidence, that petitioner is a Communist-front organization. It presented the grounds of this finding, and the subsidiary findings on which it rests, in an exhaustive report. The court below, in discharge of its statutory obligation, determined that the Board's conclusion was supported by the evidence after a painstaking review of the entire record. In these circumstances, there is no occasion for this Court to subject the lengthy transcript to a second judicial review for the purpose of reappraising and re-evaluating the evidence. The Court need do no more than satisfy itself that the court below made a fair assessment of the record on the issue of sufficiency of the evidence. That the court below did so is evident from its opinion. Most of petitioner's contentions to the contrary are little more than quibbles which would not justify overturning the determination of the Board and court below even if they were correct.

B. The evidence shows that the Board's findings that petitioner was controlled by the Communist Party is supported by the evidence. The Abraham Lincoln Brigade was formed to fight in Spain by the American Communist Party under the direction of the Communist International and was completely under Communist control. The Communist Party formed petitioner as an organization of the returning veterans. All of petitioner's principal officers have been Party members and usually "functionaries" and

most of petitioner's subordinate officers and ordinary members are also at least Party members. The evidence showed that petitioner's officers and members were under discipline by the Party and that petitioner responded to Party orders. As a result, petitioner followed without deviation Party positions including conforming its positions immediately to changes in those of the Party.

While much of the evidence relates to events prior to the passage of the Act in 1950, the Board was entitled to consider this information as bearing on the Party's present character. *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 69. There was no evidence that the Party's relationship to petitioner changed after 1950. On the contrary, the evidence showed that petitioner's leaders remained the same as before and it continued to follow the policies of the Communist Party without deviation.

C. The evidence likewise supports the Board's finding that petitioner primarily operates for the purpose of giving aid and support to the Communist Party. Petitioner arose out of the Abraham Lincoln Brigade which had as one of its primary purposes the training of seasoned, experienced Party members to lead the Party's struggles in the United States after the war. Petitioner was organized by the Party to be a source of such Party members and to support Party policies. Petitioner has in fact been used in this manner. Petitioner's members have been promoted by

the Party to important posts. It has supported Party policies on numerous issues. And it has provided coordination with other Communist mass organizations, acted as a joint sponsor of a Party crusade, worked to increase *Daily Worker* subscriptions, and taken part in Party picket lines. Although much of the evidence relates to events before 1950, the evidence after that date supports the determination below that petitioner's policies continued as before.

D. Section 13(f) states four evidentiary factors for the Board to "take into consideration." However, the sole test is that stated in Section 3(4)—*i.e.*, control by, and support of, Communist-action organizations. *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 14, 58, 61. Consequently, it would be immaterial even if the Board misconstrued or misapplied one or more of these factors as long as it considered all the appropriate evidence.

In any event, the Board correctly construed and applied Section 13(f). There was ample evidence that Party representatives were active in the management and direction of petitioner (Section 13(f)(1)); that the Party gave support to petitioner (Section 13(f)(2)); that petitioner used its resources to promote Party objectives (Section 13(f)(3)); and that petitioner's policies did not deviate even in a single particular from those of the Party (Section 13(f)(4)). There was sufficient evidence that these factors existed both before and after 1950. The Board was not required to make findings as to the proportion of Party

and non-Party support for petitioner or how much of petitioner's resources were used for Party and non-Party objectives. While many of petitioner's policies can be explained on grounds other than Party control, the complete identity of the positions of petitioner and the Party even in phraseology is strong evidence that petitioner is controlled by the Party and operates primarily to give support to it.

II

Petitioner's major constitutional arguments are answered in the government's brief in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board,* No. 44, this Term. Petitioner's other contentions are without merit.

A. The Board's use of evidence concerning events pre-dating passage of the Act does not violate the *ex post facto* clause of due process. First, the Act, as this Court held in the *Communist Party* case (367 U.S. at 83–86), is a regulatory, not a penal, statute. Second, the Act has no retroactive effect; it applies only to organizations which at the time of the hearing were controlled by, and operated primarily to give aid and support to, Communist-action organizations. Evidence concerning events before 1950 is used only to establish the character of the organization at the time of the hearing.

B. The constitutionality of the disability imposed on Communist-front organizations and their members is premature since petitioner is now being called upon only to register. *Communist Party* v. *Subversive Activities Control Board, supra,* 367 U.S. at 77.

ARGUMENT

This is a companion case to *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board,* No. 44, this Term. In our brief in that case, we discussed at length the background of the Subversive Activities Control Act, the nature of Communist-front organizations, and various statutory and constitutional issues. We will not repeat that discussion here, but instead will refer to the appropriate pages in the earlier brief.

I

THE COURT BELOW CORRECTLY SUSTAINED THE BOARD'S ULTIMATE FACTUAL FINDING THAT PETITIONER IS A COMMUNIST-FRONT ORGANIZATION AS DEFINED IN THE ACT

Section 3(4) of the Act defines a Communist-front organization as any organization which is (1) "substantially directed, dominated, or controlled by a Communist-action organization" (the control component) and (2) "is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement" (the aid component). The Board, on the basis of a full hearing, found that petitioner was controlled by, and primarily operated to give aid and support to, a Communist-action organization, *i.e.,* the Communist Party.

Petitioner attacks this determination on the ground that the Board failed to apply the standards set forth in the Act to the evidence before it. Most of petitioner's contentions involve trivial points which, even if correct, would not require overturning the Board's order and the decision of the court below.

A. THERE IS NO OCCASION FOR A SECOND JUDICIAL REVIEW OF THE BOARD'S FACTUAL FINDING THAT PETITIONER IS A COMMUNIST-FRONT ORGANIZATION.

The evidence in this proceeding consists of more than 4,500 typewritten pages of testimony from 21 witnesses and more than 300 exhibits. Its presentation extended over more than 6 months. The exhibits consisted largely of copies of petitioner's official publications. The oral testimony covered to a large extent activities of both petitioner and the Communist Party which were participated in by, or were otherwise within the personal knowledge of, the witnesses. Thirteen of the witnesses for the Attorney General were former members of the Communist Party, of whom 6 had also been members of petitioner. On the basis of this evidence, the Board found that petitioner is a Communist-front organization as defined in the Act and, as such, required to register (R. 208–209). The Board presented the grounds of this determination in an exhaustive report (R. 1–209). The court of appeals, on the basis of a thorough review of the evidence, upheld the Board's findings (R. 215–232).

Petitioner's non-constitutional contentions fall into two categories: the construction of the statute and the adequacy of the evidence. Within broad limits,

both are within the discretion of the agency charged by Congress with the responsibility for administering the Act. Thus, it is well established that the decision of an agency concerning the construction of the statute it administers is entitled to considerable weight. *E.g., National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111. In *Communist Party* v. *Subversive Activities Control Board*, 367 U.S. 1, this Court held that "[s]ince the determination that an organization is or is not a Communist-action organization is largely a matter of the working out of legislative policy in multiform situations of potentially great variety, the 'construction' of the statute which ensues from its application to particular circumstances by the administrative agency charged with its enforcement is to be given weight by a reviewing court." 367 U.S. at 40–41.

We submit that the Board's findings of fact are entitled to even greater weight. *E.g., National Labor Relations Board* v. *Link-Belt Co.*, 311 U.S. 584, 597; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U.S. 261, 271. Moreover, Section 14(a) of the Act provides that, where review of a Board order is sought:

> The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari * * *.

Relying on a similar provision in the Taft-Hartley Act, this Court in *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502, held that

"Congress has charged the Courts of Appeals and not this Court with the normal and primary responsibility for granting and denying enforcement of Labor Board orders," and concluded (*id.* at 502–503):

> The same considerations that should lead us to leave undisturbed, by denying certiorari, decisions of Courts of Appeals involving solely a fair assessment of a record on the issue of unsubstantiality, ought to lead us to do no more than decide that there was such a fair assessment when the case is here, as this is, on other legal issues.

Accord, *National Labor Relations Board* v. *American Insurance Co.*, 343 U.S. 395, 409–410; *Federal Trade Commission* v. *Standard Oil Co.*, 355 U.S. 396, 397–404; *Peurifoy* v. *Commissioner*, 358 U.S. 59, 61. This well-established principle was expressly applied to the Subversive Activities Control Act in the *Communist Party* case (367 U.S. at 69):

> We see no reason why still another court should independently reappraise the record. We have declined to do this in the case of other agencies as to whom reviewing power on the facts has been vested in the Courts of Appeals, and we find no purpose to be served in departing now from this settled policy of appellate review.

In short, there is no occasion for this Court to repeat the scrutiny given the lengthy transcript and numerous exhibits by the Court below for the purpose of reappraising and re-evaluating the evidence and redetermining its sufficiency to support the Board's findings. This Court need do no more, as to petition-

er's non-constitutional contentions, than to satisfy itself that the court of appeals reasonably construed the statute and made a fair assessment of the record. That the court of appeals did so, we submit, is evident from its opinion. In any event, as we will now show, the Board and the court below did not err in applying the statutory definition of a Communist-front organization to the evidence in this case.

B. THE BOARD AND THE COURT BELOW PROPERLY FOUND THAT PETITIONER WAS CONTROLLED BY THE COMMUNIST PARTY WITHIN THE MEANING OF SECTION 3(4)

1. Since the Statement describes in considerable detail the evidence before the Board and the Board's findings (pp. 6–15, 20–40), we will only summarize the evidence showing that the Communist Party controlled petitioner.

The Abraham Lincoln Brigade was formed to fight in Spain in 1936 by the American Communist Party pursuant to the directions of the Comintern which controlled the world Communist movement. The Brigade was subject to Communist indoctrination, direction, and discipline through the Comintern, the Spanish Communist Party, and the American Communist Party. When the war was over, the Communist Party also controlled and supervised the return of the Brigade from Spain.

After the veterans of the Brigade had returned to the United States, petitioner was formed by the Communist Party. All petitioner's members have been veterans of the Brigade except for honorary members who have almost invariably belonged to the

Party. All of petitioner's principal officers and many of their subordinates have been Party members and usually "functionaries."[2] Much of petitioner's membership also has consisted of active Party members, including high Party officials.

The evidence showed numerous instances in which petitioner responded to specific Party orders and discipline and where petitioner's officers reported to the Party. Petitioner followed without deviation Party positions, including conforming its policies immediately to changes in those of the Party. The evidence showed that petitioner's policies were traceable to specific directions from the Party.

In short, there was overwhelming evidence that petitioner was formed by, and has been controlled not only generally but in detail by, the Communist Party.

2. Petitioner's attack on the finding of control under Section 3(4) is as follows: (1) the court below held that the control component requires evidence that the dominant leaders of the alleged Communist front were Party functionaries or representatives after the passage of the Act in 1950 (R. 222); (2) the court found that the evidence was insufficient to

[2] John Lautner, a government witness, who had been a Party official, testified that "a Party functionary is a member of the Communist Party who has a specific assignment from the Party * * [,] is a dedicated person who subjugates his own personal desires and problems, to that of the discipline of the Party * * * [, and] will go wherever the Party sends him and do whatever the Party demands of him, and completely subjugates himself to Party discipline" (Tr. 51).

show that Milton Wolff and Moe Fishman, petitioner's principal officers after 1950, were Party functionaries or representatives (R. 224); (3) the court concluded that petitioner was controlled by the Communist Party after 1950 solely on the basis of a 1952 letter from petitioner indicating that petitioner had a nine-member executive board, four of whom were shown to be Party functionaries (R. 225); and (4) this last conclusion of the court is not supported by sufficient evidence. Petitioner's contention is erroneous in at least four regards.

a. Petitioner relies on the statement of the court below that the determination whether petitioner was controlled by the Communist Party required inquiry into whether "the dominant or key" "persons active in the management, direction, or supervision" of petitioner "were authorized to do so by the Party" (R. 222). The court based this statement on Section 13(f)(1) which requires the Board to "take into consideration" "the extent to which persons who are active in [the alleged Communist front's] management, direction, or supervision * * *" are "active in the management, direction, or supervision of, or as representatives of," the Communist Party. But the court did not hold that this was the sole evidence which could be considered in determining the question of control. On the contrary, the court clearly stated (R. 226):

> [A]lthough the language of the first two criteria (one directly and the other indirectly) relate to management and control and the other

> two relate to objectives and policies, it was not intended that the four criteria be split into two separate parts, one applicable to the first half (clause A) of the statutory definition and the other applicable to the second half (clause B). The statute itself does not indicate such a dichotomy of the criteria. We think the Board must "take into consideration" all four of these specifications in determining the applicability of the whole of the statutory definition.

The court then considered all the evidence relating to control by the Communist Party and upheld the Board's finding on that issue (R. 226–229).

The court's holding was dictated by the plain language of the statute. The Act defines a Communist-front organization in Section 3(4) and provides in Section 13(f) only that certain kinds of evidence shall be taken into consideration. This Court therefore stated in the *Communist Party* case that Section 13(f) provides merely a guide for the Board in applying the test provided in Section 3(4). 367 U.S. at 14; see *id.* at 58, 61.

Thus, all the evidence must be considered in determining whether petitioner was a Communist front at the time of the hearing. The government need not show that petitioner's leaders were Party functionaries or representatives. This Court in the *Communist Party* case defined control in the analogous section relating to Communist-action organizations (Section 3(3)) as "incidents which assure that the organization will unquestioningly adhere to the line of conduct appointed for it." 367 U.S. at

40. Among these incidents, the Court suggested subjection of the leadership of the controlled organization to the personal discipline of the controlling organization and allegiance owed by the controlled organization's leaders to the controlling organization. The government was only required to meet the same standard here.

b. We have shown above (pp. 55–56) that the evidence, taken as a whole, shows petitioner's control by the Communist Party. It is important to emphasize that the Board could properly rely on evidence prior to the time the Act was passed. As we discussed in our brief in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board*, No. 44, this Term, pp. 66–67, and as this Court held in the *Communist Party* case, 367 U.S. at 69, such evidence of the past goes a long way toward establishing both petitioner's present character and that of its leaders. For, in the absence of other evidence, it is likely that an organization which, only a few years before, has been controlled by the Communist Party, is still so controlled and that an organization's leaders who were recently Party "functionaries" or members remain so.

Applying this principle here, petitioner was clearly controlled by the Communist Party before 1950. Even assuming, as petitioner says, that after that date its two principal officers, Wolff and Fishman, were not Party "functionaries," there was strong evidence from which to infer that they were at least Party members. For the evidence showed that they

were Party members as late as 1949 and 1947, respectively, and there was no indication of any change in their activities thereafter. Considerable evidence showed that after 1950 petitioner continued, as before, to support Communist causes without deviation from positions taken by the Communist Party (A.G. Exs. 108, 111, 156–157, 213–227; R. 112–178). Petitioner's Chicago office was headed in 1955 by a Party member (Tr. 1368, 1372–1373, 1400–1401; A.G. Exs. 110, 113, 116; R. 107). A letter from petitioner in 1952 indicated that it had a nine-member executive board, of whom four had been Party functionaries and two others Party members in the recent past[3] (A.G. Exs. 62, 103, 104; R. 107; see the Statement, p. 26 above). Thus, considerably more evidence than the 1952 letter alone was before the Board showing petitioner's continued connection to the Communist Party.

As the court of appeals stated, after a careful review of the evidence (R. 228–229):

> We think the Board was entitled to view these [post-1950] events in the context of, or

[3] The dissenting opinion below points to this fact that the Party connections of the members of petitioner's executive committee related to 1938 to 1949 (R. 231–232). However, it is a fair inference, in the absence of any contrary evidence, that at least some of these individuals remained "functionaries" and members of the Party. At least, this is evidence which may properly be considered along with other evidence to determine petitioner's relationship to the Party after 1950.

> through the coloration of, the past. The events in 1950–1954 were not factually isolated. The Brigade continued to operate after 1950. It had the same officers and occupied the same offices. It continued to publish its magazine. The character and tone of its declarations upon the subjects with which it dealt were the same as those it had always utilized. So that factually, on this record, the post-1950 activities and policies appear as a continued, although diminished, stream, rather than as a separate, new phase of life. Thus viewed, in the light of all that had gone before, considering the extent to which the management of the Brigade was dominated by representatives of the Party, and the extent to which it supported the Party and the Party supported it, and its policies conformed to the policies of the Party, we think the Board was justified in concluding that upon the record as a whole a preponderance of the evidence establishes that the Brigade was, in the years immediately prior to the hearing, substantially dominated, directed or controlled by representatives of the Party * * *.

Thus, considering all the evidence, the court below upheld the Board's finding (R. 109) that petitioner continued to be run by functionaries and representatives of the Party. Since, as we have seen, Section 13(f)(1) is not the ultimate test of a Communist-front organization, the Board and court were not required to make such a finding. But having done so on the

basis of ample evidence, the control component of the statutory definition was clearly satisfied."

c. Petitioner's reliance on an alleged disagreement between the Board and the court below as to whether Wolff and Fishman served as Party functionaries or representatives is erroneous. First, the court did not, in fact, disagree with the Board. While the court found that there was "no direct, specific evidence" that Wolff and Fishman were functionaries of the Party, the court suggested that their "representative capacity" could be "inferred from the fact that they made reports to the Politburo concerning the Brigade" (R. 225). The court later found that petitioner was directed by representatives of the Party (R. 229). Since, as the court said (R. 223–225), Wolff and Fishman were petitioner's principal officers, it is clear that the court accepted the Board's finding that they were representatives of the Party.

Second, even if the court had found insufficient evidence to support the Board's determination that Wolff and Fishman were Party functionaries, that would have been immaterial. The court agreed with the Board that they were Party members (R. 224). It also agreed that petitioner was controlled by the Com-

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* Petitioner contends (Br. 44) that the court below and Board differed as to whether the government was required to show that petitioner's officers were representatives of the Party. The Board, as petitioner says, did not require such proof; we have shown above (pp. 57–58) that the court also did not. In any event, both the Board and court made such a finding (R. 105–106, 109, 229) so any difference on statutory interpretation is irrelevant.

munist Party. As this Court held in the *Communist Party* case (367 U.S. at 67), the reviewing court need not agree with every subsidiary finding of the Board. See the government's brief in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Board,* No. 44, this Term, p. 89.

Third, any ruling by the court below that the Board's finding that Wolff and Fishman were functionaries was not supported by sufficient evidence would have been erroneous. Wolff had been a long-time Party member and, in 1949, had been assigned by the Party to the Civil Rights Congress as a national organizer (Tr. 143–144, 151–152, 1952, 2509, 2703, 2753–2754, 4125). Wolff became national commander in 1939 at petitioner's first national convention, a convention which was held after consultation with the Party's national committee (Tr. 2758–2760; R. 100–101) and which was planned, organized, and conducted by individuals who were, without exception, Party members and in many cases Party functionaries (see the Statement, pp. 23–24 above; R. 100–101). The Brigade's constitution, adopted at this convention, had the prior approval of the Party's national committee (Tr. 2679–2680; R. 96). Subsequent to his election, Wolff reported to the Party's national committee concerning petitioner (Tr. 2642, 2753; R. 110). It could reasonably be inferred from this evidence that Wolff became and served as national commander of petitioner at the behest of the Party. This inference is strengthened by Wolff's continual activity in support of Party programs (*e.g.,* Tr. 1316–1317,

1358–1359, 2387–2407; A.G. Exs. 95, 96, 98, 144; R. 139–140, 141, 150–151, 164, 165, 166, 178, 179–180.)

The evidence as to Fishman is not as complete. There is, however, evidence of his Party membership during the periods from 1940 to 1941 and 1947 (Tr. 1944–1945, 2002–2007) and possibly 1946 (Tr. 2087–2089). He was selected by Wolff, a Party member, as an executive officer of an organization whose formation and staffing by the Party has already been described (see the Statement, pp. 20–25 above; R. 95–109). As in Wolff's case, Fishman has also been active in support of Party programs (Tr. 1389, 2483–2493; A.G. Exs. 108, 218, 219, 221, 223; R. 162, 173–178). In short, there was sufficient evidence for the Board to find that Wolff and Fishman were Party representatives when acting as officers of petitioner.

d. Finally, petitioner's attack on the reliance of the court below on "a single letter" (Br. 15) is misplaced. As noted, the Board's finding that the Communist Party controls petitioner rests on far more than this particular letter. Indeed, the letter was cited by the court only to show that after 1950 petitioner had an executive committee which, other evidence showed, was composed largely of Communist functionaries or members.

The letter cited by the court was signed by Wolff and Fishman as the national commander and executive secretary, respectively, of petitioner (A. G. Ex. 103). The court inferred that the nine signatures which followed were of petitioner's executive commit-

tee (R. 223, 225–226). This conclusion is supported by a subsequent letter which was similarly signed (A.G. Ex. 104) and by a bank record listing some of the same persons as signatories on petitioner's checking account in their capacity as officers and members of the executive committee (A.G. Ex. 62). Moreover, in its answer filed with the Board on November 16, 1953, in response to the petition of the Attorney General, petitioner stated:

> The management, direction and supervision of the Respondent has always been under the exclusive control of the elected officers of the organization pursuant to the constitution and by-laws adopted by the members of the organization. Further answering such allegations, Respondent states that it sets its own policies and makes its own decisions; that it is self-governed, and its governing body is as set forth in Article X of its constitution which provides:
>
> "(1) The final authority of this organization shall rest always in the hands of the membership and shall be expressed at a delegated Convention once every year. The National Executive Committee shall call such Convention.
>
> "(2) Between Conventions, authority shall be vested in the National Executive Committee."

The Board and the court were fully justified in finding that the 1952 letter contained the names of petitioner's executive committee which had an important part in running petitioner.

C. THE BOARD AND THE COURT BELOW PROPERLY FOUND THAT PETITIONER OPERATED PRIMARILY TO GIVE AID AND SUPPORT TO THE COMMUNIST PARTY WITHIN THE MEANING OF SECTION 3(4)

1. We have described in some detail, petitioner's aid and support of the Communist Party in the Statement above, pp. 40–46. In summary, the Abraham Lincoln Brigade was formed to fight on the Republican side in the Spanish Civil War by the American Communist Party under the directives of the Communist International. This military aid was important to the world Communist movement since the Republican cause offered an opportunity for a Communist Party to participate in the government of a western European country which could lead to greater Communist influence and perhaps dominance in Spain and, through it, in Latin America (R. 89–90). Military victory would curb fascism and thereby help to protect the Soviet Union (R. 89). In addition, the American Communist Party considered the Brigade of importance to it because service in Spain would provide seasoned, experienced Party members who could lead the Party's struggle to establish a Communist dictatorship in the United States.

Petitioner was formed by the Communist Party as a means of organizing the veterans of the Brigade upon their return from Spain. It was hoped that petitioner would thereby provide a reservoir of personnel for the Party. As the Party's national chairman, Earl Browder, told the Party's National Committee in December 1938 (A.G. Ex. 11 (p. 23); R. 97–98):

> I must say a word of emphasis on the question of the veterans of the Lincoln Brigade, especially those who are coming back soon. * * * We must in an organized way, very patiently and systematically, help establish the guarantees everywhere, that each one in his own community, in his own state, is absorbed back into the everyday life of our people so that the great contributions they have to make to us will become possible. They are not coming back with these great contributions all tied up in a bundle in their pockets ready to pull out and show you; only in after years will you be able to measure the tremendous addition to our forces that these boys are going to be. * * *

Petitioner did in fact serve the announced Party purpose of acting as a reservoir of trained Party members, for petitioner's members were highly regarded within the Party and were given special consideration in promotion in it throughout petitioners existence.

Petitioner has also served the Party by supporting its positions without deviation. This support has frequently been not only in substance but often in phraseology. Petitioner has immediately conformed its policies to reversals in those of the Communist Party. Finally, petitioner has worked in coordination with other Communist mass organizations, acted as a joint sponsor of a Party crusade, worked to increase *Daily Worker* subscriptions, and taken part in Party picket lines, parades, fund-raising events, and other Party functions.

We submit that this evidence is plainly sufficient to support the Board's finding that petitioner operated primarily to give aid and support to the Communist Party (R. 209).

2. Petitioner claims (Br. 18–21) that the evidence concerning events after 1950 does not support the Board's finding concerning petitioner's objectives at the time of the hearing. We have seen above (p. 59) that the Board and court below properly placed considerable reliance upon the evidence before 1950 to show the character of petitioner's activities at that time. If, as is clear, petitioner operated before 1950 primarily to give aid and support to the Communist Party, all that the evidence concerning events after 1950 need show is that petitioner's character did not substantially change.

As shown, petitioner continued after 1950 to be controlled by the Communist Party. Moreover, it continued to support, without deviation, Party policies. For example, as the court below noted (R. 226–229), petitioner attacked "Wall Street imperialists," "war mongers," and American foreign policy toward Franco Spain, demanded cessation of the Korean War, and supported its members indicted under the Smith Act (*e.g.*, A.G. Exs. 109–115, 213–215, 220; R. 173–178). While petitioner, of course, had the right to do all these things, they demonstrated that the Communist Party's control of petitioner continued to be used so that petitioner operated primarily to give aid and support to the Party.

D. THE EVIDENCE AMPLY SUPPORTS THE BOARD'S SUBSIDIARY FINDINGS UNDER SECTION 13(f)

In reaching its ultimate conclusion as to whether an organization is a Communist front, the Board is required by Section 13(f) to "take into consideration" four evidentiary factors:

> (1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and
>
> (2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and
>
> (3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist action organization, Communist foreign government, or the world Communist movement referred to in section 2; and
>
> (4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.

Petitioner attacks the Board's findings under all these subsections. We submit that the arguments are

erroneous. But, in addition we emphasize, as is noted above (pp. 57–58), that Section 13(f) merely provides that certain evidence must be considered by the Board; the sole tests are those stated in the definition of a Communist front in Section 3(4). Consequently, as long as the Board considered all the relevant evidence, it would be immaterial if it misconstrued or misapplied one of the evidentiary criteria. It is sufficient, as we have seen (pp. 55–58), that the Board correctly concluded, on the basis of all the evidence, that petitioner was controlled by, and operated primarily to give aid and support to, the Communist Party.

1. Petitioner first claims (Br. 22–24) that the Board misapplied Section 13(f)(1), which directs the Board to consider "the extent to which persons who are active in [an organization's] management, direction or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representative of, any Communist-action organization * * *." As noted (pp. 55–56, 59–62), the Board and court below found that petitioner was run by representatives of the Communist Party and those determinations are supported by evidence concerning events both before and after the passage of the Act.

a. Petitioner states (Br. 22–23) that the Board confused mere membership in the Party with acting as a Party functionary or representative. The record, however, shows no such error. While the Board's report does on several occasions say that groups of peo-

ple were "functionaries or members," this does not mean that the Board was equating the two. Instead, the Board was referring to a list of people, some of whom had been shown to be functionaries and some to be members only (e.g., R. 108–109, footnote). The Board, where necessary, specifically referred to individuals as functionaries or representatives (see R. 95, 99, 101, 102, 103–104, 105–106, 107). While the Board did not define "representative" or "functionary," the former term unambiguously means one who acts for the Party and the latter was specifically defined at the hearing by a government witness, John Lautner, a former Party official, as "a member of the Communist Party who has a specific assignment" (Tr. 51). He went on to explain that a full-time functionary "is a dedicated person who subjugates his own personal desires and problems, to that of the discipline of the Party," one who "will go wherever the Party sends him and do whatever the Party demands of him" (Tr. 51). It is clear that this definition was accepted by petitioner as well as by the Board, since petitioner objected to the identification of particular individuals as functionaries in 18 exceptions to the recommended decision, but made no objection to the use of that term.

It is true that the Board does discuss, in this section of its findings, some individuals identified only as Party members (R. 101, 106). But the Board, in dealing with the formation and organization of petitioner, was entitled to consider the consistent

presence of Party members on its various committees and in many of its offices. Clearly, the presence of Party members in these positions is relevant to the Board's ultimate determination, since there was evidence, and the Board found, that petitioner was created by the Party as a reservoir of trained Party members (R. 97–99) and that petitioner was subject to Party discipline (R. 121). It may well be that the presence of mere Party members in important positions within petitioner would not itself be sufficient to support a finding under Section 13(f)(1), but the Board could properly consider this evidence as relevant to the ultimate issues before it.

b. Petitioner also attacks (Br. 23–24) the first evidentiary guide on the ground that the Board did not find that the individuals discussed were simultaneously active in both the Party and petitioner. Petitioner's argument seems to be, that, since the Board did not specifically state each time it discussed an individual's activity in petitioner and the Party that such activity was concurrent, the Board ignored the question. But the Report is replete with examples demonstrating not only that the Board was aware of the need for the activity to be simultaneous but also that it found contemporaneity (R. 81, 93, 95, 101, 102, 106–112, 114, 116–117, 150–159, 163). For example, the Board found that petitioner's executive secretaries since its inception were concurrently Party members or functionaries (R. 106); stated that petitioner's first national commander was then a Party functionary (R. 95, 100); and noted that Lautner testified con-

cerning the continued Party activity up to at least 1950 by several of petitioner's leaders—including Milton Wolff, petitioner's national commander, and Irving Goff, Edward Robinson and Felix Kuzman, each of whom had been petitioner's executive secretary and/or a member of its National Board (R. 105–108, 115–117). In contrast petitioner points to no instance which indicates that the Board ignored the time element and makes no showing that the evidence supports its contention. Thus, petitioner is asking the Court to presume that the Board ignored an obvious and important factor in considering the first evidentiary point.

2. Section 13(f)(2) directs the Board to consider "the extent to which its support, financial or otherwise, is derived from any Communist-action organization * * *." After summarizing the evidence (R. 122–131), the Board found that the aid given by the Party in the formation of the petitioner was "material and substantial" and that the continuous aid thereafter given by the Party was of the same character (R. 122). And as one of its ultimate findings, the Board held that the "Party has continuously, in the many ways shown in this Report, aided and supported [petitioner] and thus assured itself of its continued usefulness" (R. 207).

a. Petitioner attacks (Br. 24–27) this finding of Party support primarily on the ground that in considering "the extent to which" the petitioner was supported by a Communist-action organization or the world Communist movement, the Board did not make a finding as to the exact propor-

tion of petitioner's support which came from the Party.

We first note that Congress did not provide that the Board shall measure the extent of Party support on a precise scale. As we have seen (p. 58), the evidentiary considerations of Section 13(f) do not provide a formula—they are factors which must be considered in reaching an ultimate finding.

Second, it is not even clear that, as petitioner suggests, a high percentage of non-Communist support shows that an organization is not a front. As part of its findings prefacing the Act, Congress stated in Section 2(7) that one of the purposes of Communist-front organizations was "to obtain financial and other support from persons who would not extend such support if they knew the true purpose of, and the actual nature of the control and influence exerted upon, such 'Communist fronts.'" As the aid received from non-Communist sources becomes more extensive, the support given by the Party would compose a smaller and smaller percentage of the front's support. If petitioner's view were followed, the more successful the front organization, the less it would satisfy the statutory definition. Instead, we submit that substantial Communist support for an organization—particularly, as in this case, in its founding and organization—constitutes strong evidence that the organization is a Communist front even if, as a matter of mathematics, most of its support comes from non-Communist sources.

b. Petitioner also objects (Br. 25–26) to the Board's reliance on particular evidence as showing Party support of petitioner. For example, it states that a $500 contribution given by the Communist Party could not support the conclusion that petitioner was controlled by the Party and operates primarily in the Party's interest. No one item of circumstantial evidence standing alone can be conclusive and the Board did not so treat any item. But the joining of many strands gives strong support for the conclusion.

c. Finally, petitioner says (Br. 26–27) that there was insufficient evidence of Party support after the Act was passed in 1950. However, as we have noted above (p. 59), the clear showing of petitioner's activities existing for a long period of time prior to 1950 goes a long way toward establishing the continuance of these activities for the few years thereafter until the time of the hearing. The Board had before it several examples of Party support for petitioner in the Party's official publications after 1950 (A.G. Exs. 150–167, 172; R. 125, 128–129). Petitioner states that such newspaper publicity does not constitute support under Section 13(f)(2) because it was not shown to have been solicited or accepted and an organization cannot be condemned for the conduct of others. Section 13(f)(2) contains no such limitations; it covers any support, "financial or otherwise." It was surely rational for the Board to *consider* the extent to which the Party is supporting petitioner, whatever form this support takes. For it is a reasonable inference

that the Party will not give substantial support to an organization which is not subject to Party control and does not operate to benefit the Party.

3. Petitioner challenges (Br. 27–32) the Board's finding under Section 13(f)(3) concerning "the extent to which [petitioner's] funds, resources, or personnel are used to further or promote the objectives of any Communist action organization * * *." Petitioners worked in coordination with other Party war organizations, was a joint sponsor of a Party crusade, supported a drive to increase subscriptions to the *Daily Worker*, and participated in Party picket lines, rallies, and other activities. However, petitioner's principal use of resources to further the objectives of the Communist Party involved support for Party positions. The Board found that "the United Front" technique was one of the main tactical approaches utilized by the Communist Party throughout the world for extending Marxism-Leninism and that at the core of this technique was the mobilization of non-Communist support (R. 83–87). This mobilization is accomplished by raising "issues which do not involve pitting communism against something else and attempting to rally masses in support of communism, but rather, involves rallying them against or around another ostensible objective" (R. 85–86). The Board then stated (R. 86):

> The real objective is always to get the maximum number of supporters that can be moved along the path of the Communist line for any particular period. "Anti-fascism" and "Span-

> ish fascism" were used pursuant to this strategy and tactic as a means of including hundreds of thousands of supporters to follow the Communist line for Communist purposes, leading ultimately to Communist domination.

In its ultimate conclusions, the Board summarized its findings concerning the purposes underlying the creation and maintenance of petitioner (R. 206):

> The [Communist Party], as a vehicle for carrying on the Communist strategy with respect to Spain, formed the respondent organization in 1938 prior to the return of most veterans. The Party purpose was to use respondent and the shibboleth of anti-fascism as a facade, an instrument to advance Communist influence in the United States and to aid the world Communist movement with reference to Spain.

a. Petitioner contends (Br. 27–28) that the Board failed to contrast the use of petitioner's resources for Communist and non-Communist purposes. As to propaganda, the Board concluded that petitioner's positions never deviated from those of the Party (R. 131, 178). Thus, all its resources in this area were for Communist purposes. Petitioner, however, says the Board should have considered how much of petitioner's resources were used for rehabilitation of veterans of the Spanish Civil War. But such rehabilitation also helped Party objectives. For the evidence showed, and the Board found, that many of petitioner's members were also members of the Party, and a major purpose of petitioner was to serve as a source for recruits into the Party (Tr. 141–142, 2638–2640,

2774–2775; R. 96–97). Since the rehabilitation of veterans directly served the Party by helping actual or potential Party members, the Board could have considered it as another use of petitioner's resources to serve Party objectives. The fact that the Board did not do so is, if anything, unduly favorable to petitioner.

In any event, petitioner has made the same error as it made concerning the second factor discussed above (pp. 73–74). The Board need not make any mathematical computation concerning the proportion of petitioner's support of purely Party objectives as contrasted to its seeming support of other objectives. The statute merely directs the Board to consider the substantiality of an alleged Communist front's use of resources to support a Communist-action organization. If this use was substantial, it would tend to show that petitioner was a Communist front even if much of its efforts went to seemingly non-Communist objectives. A Communist front might well attempt to gain prestige useful for its work on behalf of the Communist Party and to conceal its Communist connections by supporting activities having no direct Communist objectives. Here, petitioner did not do even this; petitioner's rehabilitation work was on its face related to supporting the Communist Party.

b. Petitioner claims (Br. 28–29) that the Board did not consider whether there was evidence of events occurring after the passage of the Act in 1950 showing petitioner's use of its resources to support the Communist Party. In fact, however, the Board pointed to several instances where petitioner contin-

ued to support Communist positions after 1950 without deviation (see p. 68 above). Such evidence was sufficient to show that petitioner's use of its resources before 1950 to support Party objectives continued thereafter.

c. Petitioner contends (Br. 30) that Section 13(f)(3) allows the Board to consider only evidence that an alleged Communist front is using its resources to support the objective of forcible overthrow of the government. It says that the Board may not consider whether the alleged front is serving more immediate Communist objectives. This contention, as we show at length in our brief in the *American Committee* case (pp. 71–82), is plainly contrary to the intent of Congress. For, if the Act requires a showing that a Communist front directly supports forcible overthrow, it would have no practical application. Communist fronts by nature are secret organizations dedicated to helping Communism's ultimate goals by pursuing seemingly harmless immediate objectives.

d. Petitioner argues (Br. 30–31) that the Board erroneously considered evidence that petitioner's policies did not deviate from those of the Communist Party—which directly relates to the evidentiary factor in Section 13(f)(4) (see pp. 82–88 below)—as showing petitioner's use of its resources to support the Communist Party under Section 13(f)(3). As we have seen (pp. 40–42), the Board found that petitioner was formed to use the standard Communist Party technique of gathering support for the Communist line through

other popular issues. Petitioner, the Board found, followed this technique, since the experiences of its members in Spain gave it an attractive "public image" to oppose fascism (R. 100, 207). Against this background, petitioner's promotion of the Party line constituted evidence of its use of its resources to support Party objectives and the Board was justified in so holding. Thus, the Board found that advancement of Party policies, and not mere non-deviation, constituted support of the Party.

It is true that the Board relied on much of the same evidence under Section 13(f) (3) and (4). But there is no logical or other reason why certain evidence may not be relevant under more than one of the evidentiary considerations. While petitioner says that the *Communist Party* case holds that non-deviation relates only to the control and not the objectives component, this is erroneous. Both the court of appeals and this Court in the *Communist Party* case stated that non-deviation tended to show control in determining whether the evidence of control was sufficient (223 F. 2d 531, 561; 367 U.S. 1, 61); neither court said that this evidence could not also constitute evidence of an organization's using its resources to support Communist objectives.

Petitioner says that the Board cannot consider non-deviation under Section 13(f)(3) because the First Amendment allows consideration of an organization's views only insofar as they show outside domination and prohibits basing a registration order on non-deviation alone. We submit that there is no constitutional

reason why an organization's views cannot be considered for any evidentiary purpose whatever. While we assume *arguendo* that an order to register cannot be based on such evidence alone, that is not the case here. The non-deviation of petitioner's policies from those of the Party constitutes only one part of the ample evidence of petitioner's control by, and support of, the Communist Party.

e. Petitioner objects (Br. 32) to the Board's finding that petitioner's payment of salaries to its own officers constituted aid to the Party (R. 186). However, this finding was limited to payments made to officers who were Party representatives. Surely, payment of salaries to such persons constituted aid to the Party, particularly when the evidence also showed that much of petitioner's and therefore, by inference, its officers' work was to support Party policies.

f. Finally, petitioner contends (Br. 32) that the court below introduced a new requirement in Section 13(f)(3) which was not relied on by the Board. The court stated that many persons support positions which are also the objectives of the Communist Party. Therefore, the court said, the crucial question is: "When a person, or an organization, actively presses objectives which are objectives of the Communist Party, does he or it do so as a matter of independent conviction, or does he do so by reason of substantial direction or control by the Communist Party and for the purpose of giving aid to the Party?" (R. 228). The court then stated that, upon the record as a whole, the Board was justified in concluding that petitioner

is "substantially dominated, directed or controlled by representatives of the Party, and operated primarily to aid and support the Party" (R. 229).

The court below did not apply a standard different from the Board. Instead, the court merely paraphrased the whole of the statutory definition of a Communist front in Section 3(4) and applied it to an organization, such as petitioner, which has as one of its major activities the dissemination of propaganda. For Section 3(4) requires a finding that petitioner be controlled by, and operate primarily to give aid and support to, a Communist-action organization. The Board answered the court's question—just as the court answered the question itself—by its ultimate finding that petitioner is controlled by the Party and operated primarily for the purpose of giving aid and support to the Party (R. 208–209).

4. The fourth consideration stated in Section 13(f) is the "extent to which the positions taken or advanced by [the alleged front] * * * deviate from those of any Communist-action organization * * *." The Board found that petitioner "consistently takes and advances positions on matters of policy which do not deviate from those of the Communist Party * * *" (R. 178).

a. Petitioner first renews its claim (Br. 33) that the Board relied on events occurring before 1950. However, as noted (p. 59), the Board could properly consider petitioner's activities before that date and thus determine, from evidence of later events, whether petitioner's earlier activities continued. Here, the Board properly found, on the basis of overwhelming

evidence, that petitioner's views did not deviate from those of the Party before 1950 (see the Statement, pp. 35–39 above) and there was specific evidence that this identity of positions continued (see p. 68 above).

b. The Board discussed numerous instances in which petitioner's and the Party's positions were identical (R. 131–178). Petitioner does not deny this identity as to most of the examples cited by the Board. Thus, even if petitioner's explanation of some of these examples is accepted, it would not disprove the Board's finding.

Petitioner first suggests (Br. 33) that the Board ignored the fact that, in several instances, the policies shared by petitioner and the Communist Party were also espoused by other groups or individuals. But this argument mistakes the meaning and purpose of the non-deviation factor. It is immaterial whether or not the Communist-action organization and the alleged Communist front were the only ones holding certain views or whether or not the views were popular. The critical inquiry is whether over many years an organization mirrors in each of its policies the policies of a Communist-action organization. The fact that, as to certain policies, others have shared the same views was properly given little weight in light of the fact that the Board could find no instances of deviation over a fifteen-year period. Indeed, this Court in the *Communist Party* case—in considering the meaning of the analogous evidentiary consideration relating to Communist-action organizations (Section 13(e)(2))—stated that the coincidence of policies of

a Communist-action organization with those of non-Communist groups was so irrelevant that the Board had discretion to deny cross-examination on this issue. 367 U.S. at 64–66.

Petitioner objects (Br. 38) to the Board's reliance on petitioner's opposition to the Internal Security Act. It states that it had no choice except to oppose the Act since, in view of the fact that it had already been designated a Communist front by the Attorney General and the House Un-American Activities Committee, the legislation was plainly directed against petitioner. Assuming that this is a reasonable explanation, it is irrelevant that there is a possible justification for petitioner's policy other than blind obedience to the Party line. As stated above, the question is the extent to which the numerous positions taken by petitioner did not deviate, not whether or not each position can otherwise be defended.

Petitioner says (Br. 34) that the Board improperly considered the similarity of petitioner's and the Party's view that events in Spain would influence events in Latin America, since this was a question as to which no difference of opinion was possible. If petitioner's interpretation of the Board's finding were correct, this argument would have merit (although it would hardly constitute reversible error). But the Board's finding was not based merely on the recognition by petitioner and the Party that events in Spain foreshadow events in Latin America. The Board stated that petitioner "from its inception to the present has adopted policies which coincided with

those of the Party in all their varied aspects concerning Spain, including Latin America as part of its sphere of influence * * *." This statement means not that petitioner and the Party agreed that Latin America was within Spain's sphere of influence, but that petitioner and the Party agreed on policies toward both Spain and Latin America. The Board then went on to document this finding by citing the identity of policies in both these areas (R. 152–163). For example, the Board found non-deviation concerning the Vargas government of Brazil (R. 153), the "junta" movement in Spain (R. 155), the release of two "anti-fascist" Spanish military leaders, Santiago Alvarez and Sebastian Zapirin (R. 159), and charges that Spain was using refugee Nazi scientists in atomic research (R. 160). The Board also noted that the methods used by both the Party and petitioner to gain support for the various phases of their Spanish policy were similar (R. 153, 155–157), and that petitioner functioned in close coordination with the Party in promulgating that policy (R. 157, 158, 161).

Petitioner argues (Br. 34–35) that the Party and petitioner differed concerning Greece, the Truman Doctrine, and the Marshall plan. But the alleged differences involve merely phraseology—for example, that petitioner did not use "dying capitalism," "imperialism," etc. as a Party spokesman had (Tr. 1871–1872; A.G. Ex. 50; R. 169). But such complete identity of approach and phraseology, though very often present, as the Board pointed out (*e.g.*, Tr. 136,

144, 160, 163–164; R. 167, 172), is not necessary under this subsection. Moreover, petitioner's position in this area was in fact very close even in phraseology to that of the Party, since petitioner vigorously attacked the Greek government as fascist and President Truman's policies in this area as imperialist (cf. A.G. Ex. 47 with A.G. Ex. 146 (p. 1); R. 167–168).

Petitioner challenges (Br. 35–37) the Board's finding of non-deviation concerning the Hitler-Stalin Pact. The record amply demonstrates that prior to the Hitler-Stalin Pact of August 23, 1939, both the Communist Party and petitioner were strongly "anti-fascist" (*i.e.*, pro-Soviet) and anti-Hitler (Tr. 125–126, 322–324, 874–875; A.G. Ex. 8; R. 132–133). However, by September 19, 1939, shortly after the German invasion of Poland and the outbreak of the war on September 1, the policy of the Party concerning "fascism" and Hitler had reversed itself—the war was an "unjust" war between "imperialist" nations of no concern to Communism (Tr. 388–390, 870, 880; A.G. Ex. 36; R. 132–141). Petitioner agreed that it was an "imperialist war" between imperialists on both sides and advocated neutrality (Tr. 545–546, 883–887, 2445–2446; A.G. Ex. 59; R. 135–136). Witness Herrick described the change in this manner (Tr. 545–546):

> After Soviet Russia and Hitler's Germany signed the Stalin-Hitler pact, the line of the Party changed overnight from "Collective security against Fascism" to one of "Hands off Fascism" more or less to one where the fight

> and all the slogans and all the propaganda was against Britain as a bourgeois imperialist government, against the American Government for being as they called President Roosevelt at that time, a warmonger. * * * When the Communist Party changed its line from one of "Collective Security Against Fascism," the Veterans of the Abraham Lincoln Brigade changed its line from "War against Fascism" to "It was an imperialist war and Britain and France and the United States were imperialist powers" and to one of so-called neutrality in this struggle.

Following the attack on the Soviet Union by Germany on June 22, 1941, both the Communist Party and petitioner again changed their policy. For both, the war was no longer "unjust" and "imperialist" but suddenly became "just," and they supported the allies in their fight against Hitler (Tr. 1322–1323, 2456–2457; R. 140–147; see the Statement, pp. 36–39 above).

It is true that petitioner's national commander, Milton Wolff, testified that petitioner did not change its position with respect to Germany during the Hitler-Stalin Pact (Tr. 3607–3608, 4159). But this testimony is at variance not only with documentary evidence but the testimony of members of petitioner including Herrick (Tr. 545–546; R. 136), Maken (Tr. 879–887; R. 136), Gladnick (Tr. 1540–1542; R. 136), Hamburger (Tr. 2447–2448; R. 138), and "quite a number of Veterans" (Tr. 1544) considered petitioner to have reversed its earlier position. Having considered the whole record, the Board was justified in

concluding that this overwhelming evidence should be credited (R. 146). It was surely within the authority of the Board to decide between conflicting evidence.[5]

E. THE BOARD DID NOT RELY ON IMPROPER EVIDENCE

Petitioner contends that the Board erroneously relied on evidence concerning the activities of petitioner's members which were not shown to be on behalf of petitioner (Br. 38–40) and upon hearsay testimony (Br. 40–41). Neither contention has merit.

1. The Board's use of evidence concerning petitioner's members was entirely reasonable. For example, it properly considered the promotion of petitioner's members within the Communist Party in the light of its prior finding that the Party's National Committee favored petitioner as a Party instrumentality composed largely of dedicated, active Party members (Tr. 141–142, 151, 2638–2640, 2774–2775; R. 112–113). The Board's conclusion, based on this and much other evidence, was that petitioner "maintains a rapport with the Party, primarily involving activities of its officers and a substantial segment of its membership who are Party members, which places [petitioner] in a knowledgeable position of subservience to Party control and Party purposes" (R. 113).[6]

[5] Petitioner says (Br. 36, note 32) that the Board's conclusions are contrary to the chronology of history, since the Board assumed that war had broken out between Germany, on one side, and France and Britain, on the other, prior to the Hitler-Stalin Pact of August 23, 1939. The Board, however, made no such statement or suggestion.

[6] In contrast to the large number of petitioner's members identified as Party members by the government's witnesses, petitioner's evidence identified only one of petitioner's members is not belonging to the Party (Tr. 3066).

Petitioner complains (Br. 39–40) that the recognition given by the Party to petitioner's members stemmed from the activities of these individuals in Spain, not from the fact that they were members of petitioner. But this is precisely the point the Board was making. The Board found that the Party respected membership in petitioner because it signified that an individual had proven himself and his Party dedication by going to Spain (Tr. 151, 365, 1226, 1236, 1269, 1352, 1483–1484; R. 113–121). Conversely the fact that petitioner's members were promoted in the Party facilitated Party control of petitioner and contributed to co-ordination between the organizations.

Petitioner also complains (Br. 39) that Lautner, who testified as to the Party promotions of a number of individuals, could not specifically state that each was a member of petitioner. But petitioner points to no one discussed by the Board as an example of such promotion who was not sufficiently identified as a member either by Lautner in many instances (Tr. 359–367) or by other evidence (see, *e.g.*, the Statement, pp. 26, 30).

Petitioner also claims (Br. 40–42) that "the Board persistently attributed to petitioner the Party activities of its members despite the absence of any showing of petitioner's authorization or responsibility for their activities." But all of the examples it cited show that the Board reasonably considered the evidence before it. For example, the Board observed that the activity of petitioner's members in the Party was relevant to "rapport" with the Party (R. 110).

The Board stated that, in determining petitioner's "lack of deviation [and] its implementation of Party policies," it considered the presence of Party personnel as members and officers of petitioner and their activities in the Party (R. 166–167). The Board said that their involvement with the Party suggested that these officers and members were bound to accept and support Party policies (R. 109, 167). The Board merely used the statement of a Party organizer at a Party club as cumulative evidence of the fact that the Party benefited from promotion of the *Daily Worker* (R. 184). Likewise, the Board reasonably considered the activities of Party members and representatives who were also officers and members of petitioner as evidence of Party control of petitioner (R. 109, footnote, R. 198–199). And the Board properly found, on the basis of sufficient evidence, that the members of petitioner who called for expanding the circulation of the *Daily Worker* were acting for petitioner (see Tr. 1336–1342, 2653–2659, 2742–2743; R. 181–184).

Finally, petitioner contends (Br. 42) that the Board relied on the employment of government witnesses as couriers by the Soviet Union or the Party (R. 184–186) without showing any connection between these persons and petitioner. However, witness Harris was instructed to report to both petitioner and the Party before each trip he took (Tr. 2076–2081). His experience and that of witness Hecht shows "that members of [petitioner] have been considered trustworthy by international Soviet

agents" and that petitioner's members have "functioned as international couriers for the Party and the world Communist movement" (R. 184–185). Both items were properly considered by the Board as part of the evidence before it.

2. Petitioner's attack upon the Board's use of hearsay is contrary to well-established law. As we showed in our brief in the *American Committee* case (p. 87), administrative agencies may consider hearsay to support other, more direct evidence. The Board here accurately stated that the hearsay "evidence has been given its due weight and suffice it to say that in no instance does mere uncorroborated hearsay constitute the sole support for any major finding or conclusion reached" (R. 89).

With a single exception, petitioner points to no instance of a finding based on hearsay alone. The Board's findings concerning petitioner's formation are also supported by direct evidence (*e.g.*, Tr. 141–142, 2618, 2625–2629, 2641–2660, 2674; R. 95–98). The *Worker* was identified as the official organ of the Communist Party (Tr. 50, 178, 2605–2606; R. 82); Louis Budenz, who had been managing editor of the *Daily Worker*, testified that all the policies of the *Daily Worker* were those of the Communist Party (Tr. 2648–2649) and that its statements constituted directives to Party members (Tr. 2735; A.G. Exs. 132, 133). Thus, the Board could properly consider *Worker* articles in two respects—as evidence of Party support of petitioner and of Party policy. As evidence of Party support, the significance of the articles

was merely their presence in the Party's official organ and did not depend on the truth of the matter in them. It was therefore not hearsay. And, as to the Board's second use of this evidence, petitioner itself recognizes that the Party's official organ is proper evidence of the Party's views (Br. 45).

Petitioner cites one instance, which it terms a "chief instance" (Br. 42), where the Board apparently relied solely upon an article in the *Daily Worker* to establish the fact that petitioner paid a tribute to Stalin (A.G. Ex. 172; R. 190). Assuming that this was error, the Board did not rely to any extent on this evidence and striking it would have no effect on the Board's findings or ultimate conclusions. In short, as this Court held in considering a far more important finding in the *Communist Party* case (367 U.S. at 67), such an erroneous finding would not warrant reversal. See also pp. 93–94 below.

F. THE DECISION BELOW SHOULD NOT BE REVERSED ON THE GROUND THAT THE BOARD AND COURT BELOW PLACED DIFFERENT RELIANCE ON SOME OF THE EVIDENCE

Petitioner also claims (Br. 43–45) that the decision below must be reversed because the Board and court placed differing reliance on certain evidence.[7] It points to differing weight given to pre-1950 and post-1950 evidence and particularly to the 1952 letter, which the court said disclosed petitioner's executive committee. Even if we assume that the Board and

[7] Petitioner's contention (Br. 44) that the Board and court below placed different constructions on the Act are discussed above at pp. 62, note 4, 81–82.

the court below differed somewhat in their treatment of the huge record before them, it need hardly be emphasized that such minor differences between an administrative agency and a reviewing court are not grounds for reversal by this Court. Otherwise, administrative determinations would rarely survive judicial review.

The proper rule was stated by this Court in the *Communist Party* case. There, this Court held that the Board's order need not be reversed even though one of its subsidiary findings was found by the court of appeals to be unsupported by the evidence (367 U.S. at 67):

> Remand would be called for only if there were a solid reason to believe that without that subsidiary finding the agency would not have arrived at the conclusion at which it did arrive.

It follows *a fortiori* that differing weight given to a small proportion of the evidence does not justify reversal.

The Court's holding in the *Communist Party* case is fully supported by prior decisions. It is well established that where it appears that an administrative order would have been the same if a finding had been omitted, error concerning the finding does not justify overturning the order. *National Labor Relations Board* v. *Newport News Co.*, 308 U.S. 241, 247; *National Labor Relations Board* v. *Reed & Prince Mfg. Co.*, 205 F. 2d 131, 139 (C.A. 1), certiorari denied, 346 U.S. 887; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 169 F. 2d 881, 883 (C.A. D.C.),

certiorari denied, 335 U.S. 854. The cases relied on by petitioner (Br. 43–44) are distinguishable. This is not a case in which it is unclear from the record on just what evidence the administrative findings are based (*National Labor Relations Board* v. *Virginia Electric & Power Co.*, 314 U.S. 469, 479); nor one in which the administrative order would be sustainable if based on grounds which the record shows were not the actual grounds of decision (*Securities and Exchange Commission* v. *Chenery Corp.*, 318 U.S. 80, 94–95); nor one in which the reviewing court modified an administrative order (*Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17, 20–21).

II

THE REGISTRATION PROVISIONS OF THE SUBVERSIVE ACTIVITIES CONTROL ACT ARE CONSTITUTIONAL

Petitioner attacks the constitutionality of the registration provisions of the Subversive Activities Control Act on four grounds. It contends (1) that they interfere with freedom of assembly and speech protected by the First Amendment; (2) that they are unconstitutionally vague under the First Amendment and the due process clause of the Fifth Amendment; (3) that they violate the due process clause of the Fifth Amendment because they do not allow a Communist-front organization, like petitioner, to relitigate whether the organization which controls them, here the Communist Party, is actually a Communist-action organization, once the Board has determined the character of the latter organization; (4) that they

violate the self-incrimination clause of the Fifth Amendment. Petitioner also contends that the Board's reliance on evidence pre-dating the passage of the Act violates the due process clause of the Fifth Amendment and the *ex post facto* clause and that the disabilities imposed by the Act on Communist-front organizations and their members are unconstitutional.

The first four of these contentions are identical with those raised in *American Committee for Protection of Foreign Born* v. *Subversive Activities Control Act,* No. 44, this Term. As to them, therefore, we will rely on the extensive discussion in our brief in that case.

A. THE BOARD'S RELIANCE ON EVENTS PRE-DATING PASSAGE OF THE ACT DOES NOT VIOLATE THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OR THE *EX POST FACTO* CLAUSE

We have shown in our brief in the *American Committee* case that the Board could properly consider events antedating the passage of the Act. Petitioner contends (Br. 51–52) that such procedure violates the due process clause of the Fifth Amendment and the *ex post facto* clause because it bases registration on past acts.

1. This Court has held that "only the clearest proof could suffice to establish the unconstitutionality of a statute on" the ground that it is an *ex post facto* law. *Flemming* v. *Nestor,* 363 U.S 603, 617. An *ex post facto* law is a legislative act which "imposes a punishment for an act which was not punishable at the time it was committed, or a punishment in

addition to that then prescribed." *Burgess* v. *Salmon*, 97 U.S. 381, 384; accord, *Cummings* v. *Missouri*, 4 Wall. 277, 325–326; *Ex parte Garland*, 4 Wall. 333, 377; *Garner* v. *Los Angeles Labor Board*, 341 U.S. 716, 721. Thus, for a statute to constitute an *ex post facto* law, it is necessary that there be *punishment* and that the conduct punished be *past* conduct. Neither of these requirements is satisfied here.

First, the Act is not a penal statute. As this Court expressly held in the *Communist Party* case, 367 U.S. at 83–86, and Section 2 of the Act makes clear, the Act is a regulatory measure intended to accomplish the legitimate governmental purpose of checking the serious worldwide Communist danger insofar as it was furthered by organizations within the United States. And as we have shown in our brief in the *American Committee* case (pp. 120–131) and this Court held in the *Communist Party* case (367 U.S. at 93–105), the registration provisions in the Act are reasonably related to this objective.

Second, the Act has no retroactive effect; it applies only to organizations which at the time of the hearing are controlled by, and operate primarily to give aid and support to, Communist-action organizations. It is true that the Board may consider activities of the organization which occurred before the Act was passed. But, as the court below held (R. 220), such events merely constitute evidence relating to the character of the organization at the time of the hearing.

2. The same reasoning demonstrates that the due process clause of the Fifth Amendment is not vio-

lated. Regulatory statutes may constitutionally be applied to persons because of their conduct prior to the time the statute was passed. *E.g., Hawker* v. *New York,* 170 U.S. 189; *Garner* v. *Los Angeles Labor Board,* 341 U.S. 716. *A fortiori,* there is no question that petitioner may be regulated on the basis of its character after the Act was passed even though the determination is based in part on evidence of past activities.

B. DETERMINATION OF THE CONSTITUTIONALITY OF THE DISABILITIES ON PETITIONER AND ITS MEMBERS IS PREMATURE

Petitioner attacks (Br. 54–55) the constitutionality of the disabilities imposed on Communist-front organizations and their members on the same grounds as the Party argued in the *Communist Party* case. Our answers to this contention on the merits are set forth at length in the government's brief in *Communist Party* v. *Subversive Activities Control Board,* No. 12, Oct. Term 1960, pp. 170–212. Since these issues are plainly premature at this time, we rely on our earlier brief.

In the *Communist Party* case, this Court, on the basis of the same arguments which petitioner incorporates by reference here, held that determination of the constitutionality of the disabilities both on petitioner and on its members was premature. The Court stated (367 U.S. at 77):

> This Act, like the one involved there, has a section directing that if any of its provisions, or any of its applications, is held invalid, the remaining provisions and other possible applications shall not be affected. The authorita-

> tive legislative history clearly demonstrates that a major purpose of the enactment was to regulate Communist-action organizations by means of the public disclosure effected by registration, apart from the other regulatory provisions of the Act. Such is, of course, the very purpose of the severability clause. This being so, our consideration of any other provisions than those of § 7, requiring Communist-action organizations to register and file a registration statement, could in no way affect our decision in the present case. Were every portion of the Act purporting to regulate or prohibit the conduct of registered organizations (or organizations ordered to register) and of their members, as such, unconstitutional, we would still have to affirm the judgment below. Expatiation on the validity of those portions would remain mere pronouncements, addressed to future and hypothetical controversies.

This reasoning is fully applicable here. The disabilities concerning the Communist-front organizations bear the same relationship to the registration provisions as the disabilities relating to Communist-action organizations have to the registration provisions. Indeed, even the same sections of the Act are involved.

Moreover, the *Communist Party* case is consistent with numerous other, prior decisions of this Court. In *Watson* v. *Buck*, 313 U.S. 387, 402, this Court held with regard to a state copyright statute:

> Since all contingencies of attempted enforcement cannot be envisioned in advance of [a

> statute's] applications, courts have in the main found it wiser to delay passing upon the constitutionality of all the separate phases of a comprehensive statute until faced with cases involving particular provisions as specifically applied to persons who claim to be injured. Passing upon the possible significance of the manifold provisions of a broad statute in advance of efforts to apply the separate provisions is analogous to rendering an advisory opinion upon a statute or a declaratory judgment upon a hypothetical case.

Similarly, in *Electric Bond & Share Co.* v. *Securities & Exchange Commission,* 303 U.S. 419, 443, the Court declined to pass on the "control" provisions of the Public Utility Holding Company Act since only the registration provisions were before the Court:

> By the cross bill, defendants seek a judgment that each and every provision of the Act is unconstitutional. It presents a variety of hypothetical controversies which may never become real. We are invited to enter into a speculative inquiry for the purpose of condemning statutory provisions the effect of which in concrete situations, not yet developed, cannot now be definitely perceived. We must decline that invitation.

Both these cases, like the *Communist Party* case and our position here, are grounded on the settled doctrine of this Court "never to anticipate a question of constitutional law in advance of the necessity of deciding it." *Liverpool, New York & Philadelphia S.S. Co.* v. *Commissioner,* 113 U.S. 33, 39.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment below should be affirmed.

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